The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

VOL. LXX. Saturday, November 20, 1926. No. 59

Current Topics.

The Bond of Precedent.

FROM *The Times* of 29th October it appears that in three separate instances the Anglo-German Mixed Arbitral Tribunal, first division, has declined to follow its own previous rulings on points of law. Since there is no appeal, parties disappointed by this *volte-face* would appear to have no redress, unless, perhaps, they can show that, by its constitution, the Tribunal is bound by its own interpretations of the law, in which case a point of *ultra vires* might be raised.

The question whether a particular court should be allowed to change its mind, so to speak, on its own interpretations of law, is one of both legal and public interest. The issue is one of certainty and stability against elasticity, and no doubt good debating points could be made on either side. As we all know, our own practice very strongly favours the binding force of precedent, and the House of Lords has clearly ruled in *The London Street Tramways Co., Ltd.* v. *The L.C.C.*, 1898, A.C. 375, that it is bound by its previous decisions, which, therefore, can only be reversed by Parliament. In passing, the question may be raised how an ultimate court could be bound, even by its own precedents, if it chose to disregard them, but it hardly seems likely that the House of Lords will ever rebel against the judgment of Lord HALSBURY and the weighty authority he quotes in the above case.

The Privy Council, on the other hand, appears to be free to examine its previous decisions and, if at any time thought desirable, to dissent from them: see *Ridsdale* v. *Clifton*, 1877, 2 P.D. 276, at p. 307, and *Tooth* v. *Power*, 1891, A.C. 292. By one of the many apparent oddities connected with our constitutional law, Privy Council decisions, given by judges whose decisions are final in the House of Lords, do not even bind our inferior courts: see KENNEDY, L.J., in *Dulieu* v. *White*, 1901, 2 K.B. 669, at p. 677, a case in which the court refused to follow *Victorian Railway Commissioners* v. *Coultas*, 1888, 13 A.C. 222, on a question of damages for nervous shock.

As to the liberty of judges in the courts of first instance to dissent from each others' rulings, reference may be made to the remarkable difference of opinion in the Chancery Division a few years ago on the interpretation of s. 9 (1) of the Finance Act, 1894, which was finally resolved in *O'Grady* v. *Wilmot*, 1926, 2 A.C. 231, a case in which five then recent Chancery decisions were over-ruled and four upheld. The general practice, however, is for courts of co-ordinate jurisdictions to follow previous decisions: see the *Vera Cruz No.* 2, 1884, 2 P.D. 96, at p. 98, where the late Lord ESHER stated an exception (not extending, however, to the House of Lords) when the first decision has resulted from an even division of opinion on the Bench leaving the decision of an inferior court *in statu quo*. Ancient decisions and even *dicta* of judges in inferior courts may be held binding in superior courts by long usage, but a remarkable instance to the contrary may be cited in *Hewson* v. *Shelley*, 1914, 2 Ch. 13, in which *Graysbrook* v. *Fox*, 1565, 1 Plowd. 275, and *Abram* v. *Cunningham*, 1677, 2 Lev. 182, were over-ruled. And in *R.* v. *Jackson*, 1891, 1 Q.B. 671 (the *Clitheroe Case*), *re Cochrane*, 1840, 8 Dowl. 630, was disapproved on a point of law of first-class importance in domestic affairs.

Colonial and American decisions are occasionally cited in English courts, and treated with respect as a matter of courtesy, though of course not binding. A somewhat remarkable instance of this deference has just been reported, in which the Recorder of Brighton, in deciding whether the operation of a "diddler" machine constituted unlawful gaming within the Gaming House Act, 1854, observed: "On reading the reports as furnished by the Inner Temple Library of cases heard in the Canadian courts, and after considering the judgment of these courts, I come to the conclusion," etc. Presumably the Canadian statute resembles our own, but there are at least half-a-dozen English authorities in point, so it seems curious that the Canadian decisions should be found the more relevant. The case, however, reflects credit on the industry of counsel and the pains taken by the learned Recorder.

Oxford Law School.

A WRITER in the current number of the *American Bar Association Journal* pays a high tribute to the work done by the Oxford Law School, a tribute based on his own happy experiences during some years of study in what MATTHEW ARNOLD described as "that sweet city with her dreaming spires." We on this side of the Atlantic have had it so insistently affirmed that the Harvard and Columbia Law Schools were the ultimate word in legal education of the most effective kind that it is refreshing to find an American student preferring the Oxford methods. At Harvard, he points out, the discussion of cases, or what passes for such, takes place in a group of 150 to 250 students, whereas at Oxford the number at one time rarely exceeds fifteen, with the consequence that there is a real opportunity for each to contribute something to the analysis of some comparatively recent decision which has not yet been subjected to discussion by the text-book writers. Although as a Rhodes scholar the writer's experience was solely with Oxford, he makes appreciative mention of the law school of the sister University, which leads him to describe the late F. W. MAITLAND as "the greatest name in all the Anglo-American legal scholarship of the last century." The whole article, which winds up with an imaginary, but none

the less effective, allocution by the late Lord BRYCE on the value of the study of Roman law, is pleasantly written and is well worth reading.

Parking Motors and the Law of Trespass.

IT IS REPORTED that a gentleman who refused to pay a shilling to a stranger without credentials for parking his car on an uninclosed space by a roadside in Hayling Island was subsequently threatened with certain actions and paid five guineas costs to escape this "rigour of the law." Possibly he did not take legal advice. If not, then on the circumstances as appearing it would certainly seem that his course was the more expensive. It may be granted at once, no doubt, that in accordance with *Harrison* v. *Duke of Rutland*, 1893, 1 Q.B. 142, and *Hickman* v. *Maisey*, 1900, 1 Q.B. 753, he was a trespasser directly he drove his car on to a roadside waste and stopped it there. And it follows that, if challenged by the landowner's agent, he would either have to pay any fee demanded or pass along the road on his lawful occasion. But if he refused and no attempt was made to turn him off by force, what was the position? The owner might have prosecuted for malicious damage, but would have had to prove the specific injury to his property in accordance with *Gayford* v. *Chouler*, 1898, 1 Q.B. 316. Or he might have sued for such damage in a civil action, but again he would have to prove injury. An action for an injunction against a casual motorist on a holiday and who did not claim any legal right would be laughed out of court and dismissed with costs. Motorists in such circumstances (assuming, of course, that their car has not in fact caused any damage, and that they have not resisted any force used to eject them) may be recommended to offer, at most, a shilling, with, if a High Court writ has actually been issued, the costs of issuing a plaint in the county court. When a Huntingdonshire gentleman brought a High Court action against RUPERT BROOKE and others, then all boys, for hunting moths, Mr. Justice BUCKLEY, after making an order for the payment out of court to the plaintiff of a shilling which had been paid into court, dismissed the action as oppressive, and ordered the plaintiff to pay the defendants' costs. So motorists should not be frightened at the "utmost rigour" of our very reasonable law as to trespass.

The Jurisprudence of Holland.

THE APPEARANCE of the first volume of the "Introduction to the Jurisprudence of Holland" by HUGO GROTIUS, which Professor LEE has edited, translated and annotated for the Clarendon Press—a work which as it came from the pen of its author continued in general use as a university text-book in Holland for three centuries—is of interest, not only in itself, but as a reminder of the distinguished part played by GROTIUS and the other Dutch jurists in the development of the science of law. Time was when no Scottish advocate's education was considered complete unless he had studied under the jurists who lectured at Leyden or Utrecht. JAMES BOSWELL was one of the numerous band of young Scotsmen who studied on the Continent. His father, Lord AUCHINLECK, desired that he should spend two years at Utrecht in legal studies, and he, in fact, listened for some months there to the prelections of M. TROTZ, the eminent civilian, and then, forsaking his law books, he went further afield to make acquaintance with PAOLI, whom BOSWELL senior contemptuously described as "that land-louping scoundrel of a Corsican." The legal studies of the Scottish advocates under the Dutch civilians left their mark for long in the written arguments which continued in use in the north till about the middle of the last century; and the work of these same civilians, it will not be forgotten, is the basis of much of the law administered in South Africa. The new recension of the work of GROTIUS is therefore no mere academic tribute to the greatness of that jurist; it will be found of practical value in the Dominion of the south and also, we believe, in British Guiana.

Assessment of Damages by Judge alone in Divorce Cases.

ATTENTION MAY usefully be drawn to the case of *Bedford* v. *Bedford & Powdrill*, 62 L.J. 306, in which case damages claimed by a petitioning husband against a co-respondent in an undefended divorce case, were assessed by the judge without a jury. Originally, under s. 33 of the Matrimonial Causes Act, 1857, damages claimed against an adulterer had in all cases to be ascertained by the verdict of a jury, although the respondents or either of them did not appear. This rule, however, was altered by the Juries Act, 1918, s. 1, which directed in general, subject to certain exceptions, that every action, counter-claim, issue, cause or matter in the High Court in England requiring to be tried should be tried by a judge alone without a jury. These provisions were continued by s. 2 of the Administration of Justice Act, 1920. The Administration of Justice Act, 1925, however, which was passed on the 7th May, 1923, by s. 3 repealed s. 2 of the Administration of Justice Act, 1920, and provided that provision might be made by rules of court for prescribing in what cases trials in the High Court should be without a jury, and that in the meantime "the rules of court relating to the mode of trial in the High Court which were in force immediately before the passing of the Juries Act, 1918," should have effect. The result, therefore, was to revive the old practice laid down by s. 33 of the Matrimonial Causes Act, 1857, with regard to the assessment of damages in divorce cases. But in the same year s. 3 of the Administration Act, 1925, was itself repealed by s. 226 and Sched. VI of the Supreme Court of Judicature (Consolidation) Act, 1925. Section 99 (1) of that Act empowered the making of Rules of Court for, *inter alia*: "(*h*) prescribing in what cases trials in the High Court are to be with a jury and in what cases they are to be without a jury." Section 189 (2) of the same Act, which prescribes the mode of trial in divorce cases where damages are claimed must therefore be read together with s. 99 (1) of the Act, and with the rules made thereunder. The relevant rules are rr. 2-6 of O. 36, but it is doubtful whether these rules are to be considered as applying to the trial of divorce cases.

The relevant rule which governs the question of trial by jury in divorce cases is r. 30 (B) of the Matrimonial Causes Rules, 1924, which provides that: "Unless a registrar shall otherwise order on summons, all causes in which damages are claimed shall be tried by a common jury and all other causes shall be tried by the court itself without a jury." This rule owes its existence and effect apparently to the saving section (s. 103 (1) in the Supreme Court of Judicature (Consolidation) Act, 1925), which is as follows: "Save as otherwise provided . . . all forms and methods of procedure, which . . . were formerly in force in any of the courts the jurisdiction of which is vested in the High Court . . . and which are not inconsistent with this Act or with rules of court, may continue to be used in the High Court . . . in the like cases and for the like purposes as those in and for which they would have been applicable . . ."

Depriving Successful Plaintiff of Costs.

MR. JUSTICE AVORY, in *Agate* v. *Guardian Publications Limited and others* (*Times*, 10th inst.), deprived the plaintiff, who had been awarded by the jury a farthing damages for libel, of the costs of the action. It would appear to be a somewhat difficult matter to decide in such cases whether or not the successful plaintiff should be deprived of the costs of the action. The power vested in the judge to deprive the plaintiff of his costs is derived from O. 65, r. 1, which provides, *inter alia*, that "Where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter, or issue is tried, or the Court, shall *for good cause* otherwise order." The court therefore has a discretion in such cases, but such discretion, like all other legal discretions, must be exercised

judicially. Although the powers with regard to costs of a judge, when sitting alone without a jury, differs from his powers when trying a case with a jury, it will generally be found that the principles on which the judge will act in either case are practically identical.

The fact, of course, that a plaintiff has only been awarded contemptuous damages, a farthing or a shilling for example, is not sufficient in itself to justify the judge to order that he should be deprived of his costs (*Moore* v. *Gill*, 4 T.L.R. 738), although it is a material factor to be taken into consideration by the judge when exercising his discretion in the matter. It would further appear from the case of *Wootton* v. *Sievier*, 30 T.L.R. 165, that the judge should ignore any communication made to him by the jury with reference to the question whether or not the plaintiff should be deprived of his costs.

It is naturally difficult to lay down any hard and fast rule as to how the discretion is to be exercised, and the courts appear to be averse to doing so (*The Friedsberg*, 1885, 10 P.D. 112). So long as there are materials on which the judge might have exercised his discretion an Appellate Court will not interfere with the decision arrived at in the court below, but if there were no such materials on which the discretion might have been exercised, the decision of the trial judge will not be allowed to stand by the Appellate Court.

In *Agate* v. *Guardian Publications Limited and others* the learned judge stated as his reasons for depriving the plaintiff of costs that the jury, by their verdict, indicated that the action ought never to have been brought and was oppressive that the whole of the article was complained of, although it was admitted by the plaintiff in the witness-box that he could not complain of certain parts thereof and further that the extravagant meaning attributed by the plaintiff to the certain parts of the article had had the effect of materially increasing the defendants' costs of the litigation.

The Rating of Fishing Rights.

THE QUESTION whether a person, who had obtained an exclusive right to fish over reaches of certain rivers, by payment of annual sums to the different owners or occupiers of the separate holdings, was rateable, in the absence of a deed of grant of the rights in question, was recently raised before a Divisional Court in *Swayne* v. *Howell and Williams*, *Times*, 30th October. Under the statute 43 Eliz., c. 2, where sporting rights were severed, and separated from the occupation of the soil, the grantee of such rights was not rateable at all. Where, however, the owner of the land over which sporting rights existed remained in occupation of the land, but granted such rights to a third person, the owner was rateable in respect of the value of the land as enhanced by the sporting rights which were thus let: *R.* v. *Battle Union*, 1866, L.R. 2 Q.B. 8. On the other hand, if the landlord let land to a tenant, reserving for himself the sporting rights over such land, the tenant was rateable in respect of the value of the land as diminished by the reservation by the grantor of the sporting rights: *R.* v. *Thurlstone*, 1859, 28 L.J. M.C. 106; and, in such a case, the sporting rights were not apparently assessable at all. The Rating Act of 1874, however, altered the law in some respects. Section 3 of that Act brought within the scope of 43 Eliz., c. 2, sporting rights (including rights of fishing), when severed from the occupation of the land, but with regard to the manner of rating reference must be made to s. 6 of the Act of 1874. The first sub-section of that section deals with the case where the right is severed from the occupation of the land but not let, i.e., where the owner lets the land, reserving for himself the sporting rights over the same. Where this takes place, the lessee in occupation of the land will be assessed on the full rateable value, but will have a right of deduction against his landlord in respect of the increased value of the land. The second sub-section deals with the case where the right is severed from the occupation of the land and let. Here, either the owner or the lessee may be rated. Sub-section (3) of s. 6 provides that the owner of the severed rights of sporting may be rated as the occupier thereof; and s-s. (4) defines the owner of the right as "the person who, if the right of sporting is not let, is entitled to exercise the right, or who, if the right is let, is entitled to receive the rent for the same." In *Swayne* v. *Howell* it was contended that the person who had the exclusive right of fishing was not rateable, inasmuch as the right had not been severed; it was argued that the right of fishing was an incorporeal hereditament, and that as such it lay in grant and could only be conveyed by deed and that, as there was no deed of grant, there was merely a licence to fish, and no legal severance of the right, as was required by the Rating Act, 1874. The Divisional Court, however, would appear to have decided the case on a different footing, viz., that a third person in enjoyment of such a right of fishing could only be rated in respect of such right, where the right had been "let," i.e., "let on lease." Thus Lord Justice BANKES says in his judgment: "The Legislature must, we think, be taken to have known when this Act (i.e., the Act of 1874) was passed, that these sporting rights are frequently let for the season only, and therefore made special provisions that in the absence of a lease the landlord should be deemed to be an occupier."

The Duke of Marlborough's First Wedding.

IT IS REPORTED, credibly one may suppose, since no official contradiction has been made to an announcement appearing in practically every newspaper, that a Diocesan Court of the Church of Rome has purported to annul the marriage of the present DUKE OF MARLBOROUGH to CONSUELO VANDERBILT in 1895, and that that annulment has been confirmed on appeal to the highest tribunal at Rome. It appears to have been made on the petition of the lady, alleging duress on the part of her mother and others, and lack of free consent. The respondent, the Duke, offered no defence. There appears to be an official called "*Defensor Vinculi*," whose functions in an undefended trial for nullity in the Roman Court so far correspond to those of the King's Proctor in ours, that it is his duty to uphold a marriage repudiated by both parties to it. It is not recorded, however, that he called any evidence, which the King's Proctor assuredly would have done in such circumstances.

An annulment by the Roman Church has, of course, no effect whatever in English law, and, it may be added, it is unthinkable that our court would grant one in such circumstances. A plea of duress occasionally has succeeded in our courts in respect of an unconsummated marriage: see *Scott, falsely called Sebright* v. *Sebright*, 1886, 12 P.D. 21, and *Ford, falsely called Stier* v. *Stier*, 1896, P. 1, but the clearest and most cogent evidence is required, as shown in the unsuccessful petitions reported: *Cooper* v. *Crane*, 1891, P. 369, and *Field's Marriage Annulling Bill*, 1843, 2 H.L. C. 48. Both these were cases of an unconsummated marriage nevertheless upheld. *Harford* v. *Morris*, 1776, 2 Hag. Consist. 423, was an extreme instance of forcible abduction of a ward by a guardian.

The marriage of the DUKE OF MARLBOROUGH in 1895 was celebrated in a blaze of publicity by two Protestant Bishops, and it was followed by the birth of two sons, and co-habitation for years until it was dissolved in our courts on the petition of the Duchess in 1920. Dissolution of marriage is not, of course, recognised by the Roman Church. The Duchess, however, has since married a Roman Catholic, and it is understood that the Duke desires to join the faith, if he has not already done so. The annulment therefore enables these persons to live with their present spouses under the auspices of Roman Catholic authorities, who have, at the instigation of the mother, and without protest by the father, in effect (at any rate so far as they are concerned), bastardised the two sons of the marriage.

The moral is that a divorce obtained in a secular court may work infinitely less harm and cause less injustice.

Lord Birkenhead's Acts.

By Sir BENJAMIN L. CHERRY, LL.B.

In "More Things that Matter," by Lord Riddell, there is an intriguing little article on the Act of 1922, entitled "Untying Land Knots." The author raises a few questions which seem to call for replies.

His first is, will persons who wish to settle land strictly, find that this is now an expensive luxury on the ground that two deeds are required instead of one? The answer is in the negative; it is true that the vesting deed, relating to the land, carries a ten shilling stamp, but this is more than made good by the brevity of the deed affecting the beneficial interests as compared with a deed for a like purpose made before 1926.

This brevity is made possible by the fact that nearly all the requisite powers for dealing with the situation are now supplied by statute, and that freehold and leasehold land can be properly dealt with together. It seems to have been thought that the two deeds together will be longer than the single deed employed before 1926, this is by no means a fact, for the two deeds do not involve any duplication of the subject matter. It must also be borne in mind that by far the greater number of settlements of land were, before 1926, effected by way of trust for sale involving the use of two deeds, which were employed for the same purpose, namely to keep the beneficial trusts off the title to the land. This method of settling land, by means of a trust for sale, will doubtless become more and more popular, now that the proceeds of sale can be entailed by the money settlement. The objection that it throws the work of managing the estates on the trustees, in place of the tenant for life, can be met by authorising the trustees to delegate the entire management to the tenant for life of the proceeds, provided that in all transactions involving the receipt of capital, the trustees are made parties to give the receipt. By this means we can avoid the succession of vesting instruments, simple though they be, which are required on any change of ownership when a strict settlement is used.

In this matter of vesting instruments, whether effected by deed or an assent, there still appears to be some slight confusion of thought, for there remains a tendency, quite understandable in the present generation of lawyers, to insert recitals, relating to equitable interests, with which a purchaser is not in the least concerned. Had this been foreseen it might perhaps have been wise to have prohibited or rendered nugatory recitals in documents of this nature.

Thus does anyone suppose, had it been possible, that a recital showing the beneficial title of a transferee of stock, in a transfer by a personal representative on the winding up of an estate, would have added one tittle to the efficacy of the transfer? One has only to ask the question to see the absurdity of it. Well, these vesting instruments, not for value, now take the same place as respects land, as a voluntary transfer takes as respects stock.

Lord Riddell tilts at the freedom afforded by English law to make settlements of land at all, but on grounds which, since 1882 could seldom be justified, and which, since the 1st January last, are not permissible at all. He says: "It is vital for the public and landlords that free dealing in freeholds should not be hampered by trusts." Quite so, that was the view taken by Lord Haldane and applied by Lord Birkenhead and those acting with him, not only to freeholds, but also to leaseholds.

If the Acts have not carried out this principle they should be amended till they do, but, save for a few exceptions, either insignificant or transitional in nature, no suggestion has been made by experts that the Acts fail in this respect.

It seems to have been assumed by Lord Riddell that the Settled Land Act, 1882, in effect abolished settlements, instead of merely giving power for limited owners to dispose of the settled land, for certain purposes, without putting the proceeds in their pockets.

He appears to suggest that it was not worth while, in view of the acreage of settled land, to have taken elaborate pains to set these matters in order.

Whether a greater area of land was subject to strict settlements in 1882 than was settled immediately before the post-war sale boom, must be purely a matter for conjecture; the probabilities are that the acreage was about the same, for the Act of 1882, with a view to facilitating the making of titles, treated a considerable area as settled land which had not hitherto come within that category. Be that as it may, the points relative to settled land, not dealt with by the Act of 1882, which it was sought to adjust by the new legislation were:—

(1) That whether or not the land was settled, an intending purchaser, including a mortgagee or lessee, should be able to acquire a title, without investigating the settlement or trusts, and with the same facility as if the land had not been settled, provided that he paid any capital arising on the transaction to the trustees of the settlement, and not to the limited owner.

(2) That, if land was affected by a trust but there was no tenant for life or limited owner who could make title, there should always be statutory owners or persons having the requisite powers to carry out any reasonable transaction in relation to every acre of land in the country, including land held on trust for sale.

If these ideals have been achieved, and there is no reason why they should not be, there can be no justification, even if it were practical politics, for anything so drastic as an enactment that any provision "in a deed, will, past, present or future," which prevented a person in whom land was vested from disposing of it by sale, lease or mortgage as an absolute owner, should be void!

What can be the harm in settlements, however made, if the public can ignore them, and they do not impose fetters on any reasonable dealing with the land?

After 1925 there can be no more reason for prohibiting settlements of land than of personal estate.

There is another side to the picture. Is no noble lord to be able to settle real or personal property to devolve with his title or dignity? Are we as a nation so thrifty or so sane, from childhood upwards, that we can afford wholly to dispense with the protection which a discretionary trust or a settlement is able to provide?

Some Points of Highway Law.

(By ALEXANDER MACMORRAN, M.A., K.C.)

It is impossible to compress a subject so large as the law of Highways into one or more short articles, nor is it intended so to do in the observations which follow. There are, however, many points relating to highways which are of general interest, and there are some which are not infrequently misunderstood or misapplied. It is to these that it is desired to draw attention.

What is a Highway?

A highway is sometimes defined as being land over which all the King's subjects may lawfully pass, but like most other general statements of the law, this definition has to be modified. Thus, the right of passage may be restricted to a particular kind of user, as, for example, where the way is a footway and the right is restricted to persons passing on foot; or where the way is a bridle-way restricted to user by persons with horses as well as pedestrians. The point of the definition is that though there may be restrictions in regard to the manner of user, the right is that of all the subjects of the

Crown. It is this which distinguishes a public right-of-way from a licence of the owner of the soil to a particular person, or from an easement which is enjoyed by a particular person in right of his occupation of a dominant tenement. The public right is sometimes referred to as an easement, but this is inaccurate. In the case of *Hawkins* v. *Rutter*, 1892, 1 Q.B., at p. 671, Lord COLERIDGE said: "No doubt the term 'easement' has somewhat loosely and inaccurately perhaps, but still with sufficient accuracy for some purposes, been said to define the case of a public right-of-way, in which case there exists no dominant and servient tenement; but in strictness, and according to the proper use of legal language, the term 'easement' does imply a dominant tenement in respect of which the easement is claimed and a servient tenement upon which the right claimed is exercised." Reference may be made on the same point to the judgment of Lord CAIRNS in *Rangeley* v. *Midland Railway Co.*, L.R. 3 Ch. App. 310.

There are, moreover, ways such as church-ways where the right of user depends on custom and is restricted to the inhabitants of a particular parish or hamlet: see *Brocklebank* v. *Thompson*, 1903, 2 Ch. 344. Such a way is not a highway, although, curiously enough, it is included in the definition of a highway in the Highway Act, 1835, and the explanation of this, for which, however, no authority is cited, is said to be that the definition does not mean that all roads and ways of the description named are highways, but merely that all roads and ways which at common law are in fact highways are, if they fall within any such descriptions, highways for the general purposes of the Act: "Halsbury's Laws of England," vol. 16, p. 8.

A highway must be a defined way. This does not mean that it must be fenced or made up in any way, but it must have a definite beginning and a definite ending, or, as it is put, there must be a terminus *a quo* and a terminus *ad quem*. In the well-known case of *Eyre and the New Forest Highway Board*, 56 J.P., at p. 518, Mr. Justice WILLS said: "It is perfectly true that it is a necessary element in the legal definition of a highway that it must lead from one definite place to some other definite place and that you cannot have a public right to indefinitely stray over a common, for instance. It is a very common notion that such a right can be acquired. And so it is that people often imagine that they can set up and establish a right of indefinitely straying over a place to walk upon. There is no such right as that known to the law." And in another well-known case, commonly known as the *Stonehenge Case, Attorney-General* v. *Antrobus*, 1905, 2 Ch. 188, FARWELL, J., expressed himself to the same effect. He said: "The public, as such, cannot prescribe, nor is *jus spatiandi* known to our law as a possible subject-matter of grant or prescription."

But when it is said that a highway must have a definite beginning and a definite ending it need not necessarily be a thoroughfare. A *cul de sac*—that is, a road closed at one end—may be a highway, although it is obviously more difficult to prove dedication in such a case. The public do not, in general, walk up a blind street in the exercise of a public right to do so. But, on the other hand, a road may terminate at a point of public resort. Thus, in *Tyne Improvement Commissioners* v. *Imrie*, 81 L.T., at p. 179, PHILLIMORE, J., said: "There may be a dedication of a highway to such a point as a church or to the sea or to a river." And in *Eyre* v. *New Forest Highway Board*, 56 J.P., at p. 518, WILLS, J., said he had known a public right of way to be established in a beautiful walk leading to a cliff or a place on the seashore.

CREATION OF HIGHWAY DEDICATION.

A highway may be created by statute. This may be done by express enactment, as, for example, where it is provided that a new road when completed shall be a highway. (See an example of this in *Allen* v. *Fulham Vestry*, 1899, 1 Q.B. 681.) But probably the commonest instance of statutory dedication is that of a road laid out by Enclosure Commissioners under and by virtue of an Enclosure Act. In the great majority of cases, however, a highway has its origin in its dedication to public use by the owner of the soil. Such dedication may be express as when the owner of the soil, by some unequivocal act, indicates his intention to dedicate, but in general dedication is to be inferred from the conduct of the owner in permitting the public to use the way without let or hindrance. Such user by the public is not in itself dedication, it is simply evidence which justifies the presumption that the owner intended to dedicate. On this point the judgment of NEVILLE, J., in *Holloway* v. *Egham U.D.C.*, 72 J.P., at p. 434, may be quoted, where he says: "The public cannot acquire a right over a private owner's land by mere user. I think it is often erroneously supposed that they can do so, and that all you have to prove is a user of the way which it is asserted is used as a road by the public. That is not so. The public can only acquire a right over the lands of an individual by dedication on the part of that individual and user is only valuable as evidence of the dedication by the private owner."

In considering whether an owner has intended to dedicate a highway it is important to notice that the intention is to be inferred from his conduct rather than his words. In the case of *Barraclough* v. *Johnson*, 8 A. & E., 99, LITTLEDALE, J., said: "A man may say that he does not mean to dedicate a way to the public, and yet if he had allowed them to pass every day for a length of time his declaration alone would not be regarded but it would be for a jury to say whether he had intended to dedicate or not." It will be seen, therefore, that an owner who permits the public to exercise a right of passage over his land is always more or less in danger of its being found that he intended to dedicate when, in point of fact, he had merely acquiesced in the public use of the way through good nature. On this subject reference may be made to the judgment of BOWEN, L.J., in *Blount* v. *Layard*, 1891, 2 Ch. 691, and approved by LORD MCNAUGHTON, in *Simpson* v. *Attorney-General*, 1904, A.C. 476, and by FARWELL, J., in *Attorney-General* v. *Antrobus*, already mentioned: "Nothing worse can happen in a free country than to force people to be churlish about their rights for fear that their indulgence may be abused and to drive them to prevent the enjoyment of things which, although they are matters of private property, naturally give pleasure to many persons besides the owners, under the fear that their good nature may be misunderstood." It is manifestly unsafe, however, for a landowner to rely upon the application of this doctrine to his case, especially as he can, without much difficulty, prevent the presumption of dedication from ever arising. He can put up notices to the effect that the public are only admitted by permission or that there is no thoroughfare, or he may from time to time turn back persons using the way, or he may close the way on one or more days in the year to keep alive his right to close it altogether. To sum up this part of the subject it may be said that user by the public of a defined way over private land will justify the presumption of dedication unless that presumption can be rebutted. And it may be added that in cases where it is sought to rely upon evidence of user as raising the presumption of dedication, it has been said that a single act of interruption by the owner is of much more weight upon a question of intention than many acts of enjoyment (see per PARKE, B., in *Poole* v. *Huskisson*, 11 M. & W., 827, and this was followed by COZENS-HARDY, J., in *Chinnock* v. *Hartley Witney R.D.C.*, 63 J.P. 327).

(To be continued.)

Mr. Alfred Henry Coley, LL.D.

We have much pleasure in including in this our Autumn Special Number a portrait of Mr. Alfred Henry Coley, LL.D., solicitor, who was elected president of The Law Society at the Provincial Meeting in Birmingham, on the 9th September last. Born at Oldbury, in Worcestershire, on the 24th October, 1859, Mr. Coley was educated at the Wycliffe School, Birmingham, and the Birmingham & Midland Institute. He was articled to the late Mr. Barnabas Chesshire, and, as a student, won the first prize offered by the United Law Students' Society for competition by students belonging to affiliated societies throughout the country for an essay on the Married Women's Property Act, 1882. He was admitted in 1886, was elected a member of the Committee of the Birmingham Law Society in 1888, and has continued to serve in that capacity till the present time. In 1912-14 he was president of the society. He is chairman of the Board of Legal Studies, and has for many years taken an active interest in legal education, especially in connexion with the creation of a Faculty of Law at Birmingham University. In 1908 he was elected a member of the Council of The Law Society. He is chairman of the County Court Committee, and a member of the Legal Education and Poor Persons Procedure Committees. He served as a member of the committee appointed by the Lord Chancellor in 1926 to consider and report on the arrangement and distribution of the county court circuits, districts and court centres, which committee was presided over by the late Judge Radcliffe, K.C., and after a long inquiry reported in 1919. He also served as a member of the two committees appointed by the Lord Chancellor, and presided over by Mr. Justice P. O. Lawrence, to consider and report on the Poor Persons Rules, and he is a member of the committee of which Mr. Justice Finlay is chairman, now sitting, to consider the subject of legal aid for the poor. He is also a member of the Statutory County Court Rules Committee. Mr. Coley has taken an active part in the educational work of Birmingham. He was a member of the Birmingham School Board, and afterwards of the City Educational Committee. For seven years he was a governor of the Schools of King Edward VI in Birmingham, and in his turn held the office of bailiff. He is a life governor of the University of Birmingham and a co-opted member of the Public Libraries Committee. He is also connected as a trustee with two of the oldest charities in Birmingham. His main interest outside his profession is in the study of literature.

The Honorary Degree of LL.D. was conferred upon Mr. Coley by the Birmingham University on the occasion of the visit of The Law Society to Birmingham above referred to.

W. P. H.

Words of Futurity in Wills.

By E. P. HEWITT, K.C., LL.D.

Under the old law—that is, in the case of wills made before the 1st January, 1838—a devise of real estate spoke from the time when the will was executed; and every devise was specific, there being no power to devise after-acquired real estate. A devise, although in terms residuary, was treated as specific; so that, to quote an instance given by Mr. Jarman, if a testator, seised of Blackacre and Whiteacre and having no other real estate, devised Blackacre to A and "all the rest" of his lands to B, B took Whiteacre and no more, and if the devise of Blackacre to A failed it did not pass under the gift to B. As regards personal estate, a general bequest passed all personal estate belonging to the testator at the time of his death; but in the case of bequests, other than residuary, the general rule was that verbs in the present tense restricted a bequest to subjects in existence at the date of the will: Jarman, p. 404.

The Wills Act enables a testator to dispose of all real and personal estate to which he may be entitled at the time of his death: s. 3, and a residuary devise will include lapsed devises: s. 25; and by s. 24:—

"24. Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will."

The limits to be placed on the words in this clause were discussed in *Re Portal and Lamb*, 27 Ch. D. 600; 30 Ch. D. 50. In this case the testator made a specific devise to A of "my cottage and all my land at Stour Wood," and gave his residuary real estate to B. After the date of the will the testator agreed to purchase a house and land at Stour Wood, adjoining the cottage. The purchase was not completed at his death, but nothing turned upon this point. It was held by the Court of Appeal, over-ruling Kay, J., that the specific devise did not pass the house and land, but that the same passed under the residuary gift. Lindley, L.J., in his judgment, after referring to s. 24 of the Wills Act, said:—

"That refers to the real and personal estate comprised in the will and nothing else. *It does not say that we are to construe whatever a man says in his will as if it were made on the day of his death.*"

In some cases which have arisen since the Wills Act, the question has had to be considered whether future words affecting a gift by will apply to an event happening between the date of the will and the testator's death, or only to an event happening after the testator's death, when the will becomes operative. In *Bullock* v. *Bennett*, 7 De G.M. & G. 283, the testator bequeathed £1,200 to trustees in trust to pay the income to his daughter (a widow) "for her life or until her marriage." Between the date of the will and the testator's death the daughter re-married. It was held by the Court of Appeal, over-ruling Page-Wood, V.-C., who in his judgment, 1 K. & J. 315, had stated that, "A will must be construed to speak and take effect from the death of the testator, unless a contrary intention appears by the will"—that by the re-marriage the daughter became disqualified from taking under the bequest. In *Re Chapman*, 1904, 1 Ch. 431, the testator gave his general estate for the benefit of his wife and children, and declared that if any child "shall do or suffer any act of bankruptcy," etc., or "if he or she shall contract any marriage forbidden as hereinafter expressed, then and in such case *his or her share, title, and interest of, in, and to my said estate and the income thereof shall thenceforth cease and determine.*" The forbidden marriages were declared to be marrying with a person of any degree of kindred, unless more remote than third cousin, and also (in the case of a daughter) marriage contracted without the previous written consent of the trustees for the time being of the will. After the date of the will, but before the death of the testator, a daughter of the testator married a man within the degree prohibited by the will, being her first cousin. It was held by the Court of Appeal that although if there had been a bankruptcy or alienation after the date of the will the court would have been bound by *Metcalfe* v. *M.*, 1891, 3 Ch. 1, and other cases to hold that there was a forfeiture, the provision relating to a forbidden marriage did not fall within those decisions, and that the words of the clause—more particularly the direction that the "interest should thenceforth cease and determine"—showed that the clause only referred to a marriage after the testator's death. The daughter was, therefore, entitled to her share. Vaughan Williams, L.J., in his judgment, after citing *Bullock* v. *Bennett*, said:—

"We must look at this will and see from what date it speaks. But having said that, I feel that the true proposition is this—that, when you have the date of a will . . . when the testator uses words of futurity, *primâ facie*, those words should be read as speaking from the date of his making

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MR. ALFRED H. COLEY, LL.D.,
President of The Law Society, 1926-7

his will, and not from the date of his death. *That may be a strong presumption, but if there is a presumption one way or the other, I think that is the more likely,*"

There must, it is thought, be an error in the report, in the sentence : " That may be a strong presumption," otherwise it would appear to be inconsistent with the words which follow. From the passage as a whole it would appear more likely that the Lord Justice said : " That may *not* be a strong presumption " ; and this view seems to be supported by the subsequent words in the same paragraph :—

" But I do not think that much matters. *We are entitled, indeed bound, to look at this will and construe its clauses and see from what date the testator intended the words of futurity in this particular clause to speak.*"

The effect of the use of words of futurity in wills came up for consideration again in *Re Hewitt*, 1926, Ch. 740. In that case the testator by his will, dated the 29th April, 1912, directed his trustees to pay three fiftieth parts of the income of his residuary trust estate to his niece, ETHEL HEWITT, " *during her life or until she shall take the veil.*" Some years before the date of the will, namely on the 14th August, 1905, ETHEL HEWITT became a member of the Roman Catholic Church, and, on the 3rd October, 1905, she went into a convent at Bruges ; and during the time she was there she corresponded with the testator, and from time to time visited him during her holidays. Shortly before the date of the will, namely on the 16th September, 1912, she entered upon her novitiate at the Dominican convent at Stone, having previously informed the testator of her intentions. On the 16th September, 1913, she made her profession, or, in colloquial language, she took the veil. The testator died on the 9th March, 1920. It was held that by reason of her having thus taken the veil, the testator's niece never became entitled to the bequest in her favour. In giving judgment, LAWRENCE, J., said : —

" The solution of the question, in my opinion, depends upon whether the words of futurity which the testator has used speak from the date of the making of his will or from the date of his death. *Primâ facie*, words of futurity have reference to the date of the will ; but, as has been said in many cases, the context in which such words are used may show that the testator intended them to speak only as from the date of his death. In the present case I have come to the conclusion that the testator intended the words of futurity to bear their primary meaning, and consequently that they are referable to the date of his will and not to the date of his death."

In this passage it is thought that the learned judge puts too high the presumption, if any, that words of futurity in a will refer to the time when the will was executed, and not to the time when the will becomes an operative instrument —namely the date of the testator's death. It is suggested that—except in cases governed by s. 24 of the Wills Act—the true rule of construction is to take a will (independently of any presumption) and, in the words of VAUGHAN WILLIAMS, L.J., quoted above, to " construe its clauses and see from what date the testator intended the words of futurity in the particular clause to speak."

Large Landowners and the Companies Acts.

BY ALFRED J. FELLOWS.

A LIST was recently published of companies formed to take over various large estates privately owned, imposingly headed by those of eight dukes, or nearly half the order. Competent legal advice being assumed both in their cases and in those of the others who have refrained from taking the step, it would appear that its advantages and disadvantages are somewhat nicely balanced. Circumstances may, of course, greatly vary, and considerations which would weigh with a landowner possessing little property other than realty might be negligible in the case of a man with millions in a big business. It is proposed, however, to examine here the proposition as a generalised one, and to ascertain the factors of loss and gain when an owner makes over his estates to a company incorporated under the Companies Acts, formed for the purpose of taking them over, and controlled by himself.

These factors, it may be stated at the outset, are almost entirely financial. A great landowner has position and distinction as such, which might be slightly lessened if he made over his estates to a company, even one which was merely his own alias ; if then the financial gain was small, a wealthy man might prefer to enjoy his status. One who had ambitions to become a sheriff would at least have to retain sufficient land to answer the King and his people (Sheriffs Act, 1887, s. 4). Again, the ownership of an historic house might seem pleasanter than a nominal tenancy from a company. Such matters, however, might also appear comparatively insignificant if the change resulted in a substantial saving of money in these hard times.

This, then, must be regarded as the main aspect of the question ; and since the legal and certain revenue expenses in forming a company are unavoidable, the gain must be positive to make the change worth while.

The legal expenses and the fixed duties will not be much greater in the case of a very large estate than of a small one. There are, however, normally two *ad valorem* duties, namely, the £1 per cent. on the sale of the property by the owner to the company, and £1 on the declaration of share capital under s. 112 of the Stamp Act, 1891, as amended by later Acts, which have increased the original 2s. per cent. to the present figure. Thus, in the case of a £500,000 estate, these duties alone would be £10,000, a sum beside which the legal expenses would appear insignificant.

Since, however, s. 112 applies to limited companies only, half the *ad valorem* duties may be saved if the liability of shareholders of the proposed company is unlimited. There are certain compensating disadvantages, but a large proportion of companies of this kind have in fact been registered as unlimited for this reason. Shares in an unlimited company would probably be unsaleable, but it must always be remembered that, if the need arises, s. 57 of the Act of 1908 provides machinery for converting an unlimited into a limited company without reconstruction—the full £1 per cent. *ad valorem* duty, however, immediately becoming payable.

As to the other *ad valorem* duty, two possible methods of avoiding or at least abating it have been suggested : (1) That the matter should rest in contract, the ordinary 10s. deed stamp being made to suffice, and (2) that the nominal sale to the company should be at an undervalue.

Neither of these methods can be recommended at all. The contract could not be put in evidence as a *bonâ fide* conveyance unless stamped *ad valorem*, and the landowner, as managing director, would have a duty to the company to procure a proper conveyance. Having regard to *Re Cary-Elwes' Contract*, 1906, 2 Ch. 143 (see pp. 149, 150), an instrument practically operating as a conveyance but improperly stamped as such might well be regarded as evidence that the transaction was merely colourable, and both the landowner and his advisers would be placed in a very awkward position if they had to defend such a document. And the latter would also be responsible to the other shareholders of the company if the owner subsequently conveyed the legal estate to a purchaser without notice.

Undervaluation might be even more disastrous if a public authority got wind of it, and gave notice to treat with the view of obtaining an estate without throwing too great a burden on ratepayers or taxpayers. The position of those who wished to defend the undervaluation and then repudiate it would be untenable. And, indeed, so far as the property was undervalued, it is arguable that it would be caught as a

voluntary gift under s. 74 (1) of the Finance (1909-10) Act, 1910, with the result that the *ad valorem* duty on the true value would be payable in any case.

Landowners therefore should make up their minds to pay at least the full £1 per cent. *ad valorem* duty on the conveyance, and will probably be best advised in all but the simplest cases to have the stamp on conveyance adjudicated. The other duty may be saved for the time being by the device of the unlimited company, but after the death of the original landowner it will probably sooner or later have to be converted into a limited one to make the shares marketable. In this case the duty will have to be paid under s. 112 of the Stamp Act, 1891, and s. 57 (2) of the Companies Act of 1908.

When a company is formed it must have its directors, officers and servants, and there will necessarily be running expenses. As a practical matter, however, the owner's agents, bailiffs, etc., will carry on their duties as servants of the company and the difference in working costs should be almost negligible. On the debit side of the change, therefore, the chief reckoning will be the *ad valorem* duty or duties above, and the legal expenses and smaller fees payable at Somerset House.

What, then, is the set-off on the credit side? There can certainly be no saving in tithe, mortgages and rates. But there may be possible saving in (1) income tax, (2) super-tax, and (3) death duties, compared to which the expenditure of even something over £2 per cent. *ad valorem* may be regarded as well worth while.

The ethical question of avoiding taxation in this manner may here be raised and put in its proper light, for it cannot wholly be disregarded. It is a well-established rule that the subject is not to be taxed, save under clear words in an Act of Parliament (see Parke, B., in *Re Micklethwait*, 1855, 11 Ex. 152, at p. 456), and if without fraud or breach of the law he can place himself outside a taxing statute, he is at perfect liberty to do so. In *Re Beech*, 1898, 2 Q.B. 147, Chitty, L.J., observed (p. 157): "Much was said upon opening the door to evasion. Would these be cases of evasion? Certainly not. Indeed, the whole argument on evasion of the Act is fallacious. The case either falls within the Act or it does not. If it does not, there is no such thing as an evasion. If a tax is imposed on using a crest or coat-of-arms, and a man who has previously used them ceases to use them in order to be free from the tax, there is no evasion of the Act in any sense of the term legitimately used."

Practitioners may therefore without hesitation advise their clients how they can honestly avoid the incidence of any taxing Act, and the fact that much of the land of England is bearing unfair burdens is an additional justification to ducal and other owners who seek to mitigate them. Moreover, in the last resort, if a tax can be easily avoided, the revenue authorities can call the Legislature in aid as a "big brother" whose decree is final—a course actually taken in 1922 on this very matter.

The possible savings may now be considered seriatim. And first, as to income tax. An estate will practically yield the same rents and profits, subject to the same outgoings, whether owned by an individual or a company, and, the profits being taxable in each instance under the Income Tax Acts, in theory there should be no great economy. In practice, however, a company for the purposes of its tax returns can deduct various expenses which would be disallowed to an individual landowner, including a salary to the latter as managing director. In his former capacity, as owner, he certainly could not have deducted this in his own favour. This gain might almost be disregarded, for what the company saved in tax the owner would pay personally, but there might be a saving in the personal allowance if other earned income did not neutralise it. On the whole, the savings in income tax, as distinct from super-tax, would be moderate, and in an average case would hardly, in themselves, justify the expenses of promotion.

(To be continued.)

The Validity of Foreign Divorces in English Courts.

One of the most startling results of the existence of so many and such extensive differences in the divorce laws of various States is, that a man who obtains a valid decree of divorce in one country, may find the marriage bond still unbroken according to the law of another country. Such a situation may be attended with awkward consequences in law as well as in fact.

It is the object of this article to explain the principles governing the validity of foreign divorces (*a*) in the *English* courts. In other words, the validity of a decree of divorce obtained in a foreign country will generally be considered in the light of English legal principles and for the purpose of determining legal rights within English jurisdiction. It is intended to deal only incidentally with the question of the validity of divorces in the country in whose courts the decrees have been made, and it will be generally assumed that such a decree is valid according to the law of the State in which it was obtained.

A decree of divorce obtained outside the jurisdiction of the English courts and valid in the country where it is obtained is not, of necessity, given the same validity or, if the marriage was contracted in England, any validity at all within the jurisdiction of the English courts.(*b*) This is an elementary proposition for which it seems hardly necessary to cite authorities. Reference may, however, be made to three cases by way of illustration. In the trial of Earl Russell (reported in 1901, A.C. 446) before the King in Parliament it was agreed that an order for divorce obtained by the Earl from the First Judicial District for the County of Douglas, in the State of Nevada, U.S.A., was invalid in England, and that consequently a second marriage entered into during the lifetime of his first wife was bigamous. In *R.* v. *Superintendent Registrar for Hammersmith*, 1917, 115 L.T. 882, an Indian Mohammedan who had married an English wife in England and who in accordance with Mohammedan law had sent his wife a "bill of divorcement" purporting to dissolve the marriage, was refused a certificate and licence to marry another woman, as his first marriage was, according to English law, still subsisting. Finally, in *Stirling* v. *Stirling*, 1908, 2 Ch. 366, the offspring of a second marriage celebrated in San Francisco by a man whose domicil of origin was Scots, was held to be illegitimate on the ground that such divorce, though valid according to the law in force in San Francisco, was invalid according to the law of Scotland, and consequently invalid also according to English law.

It may be observed, by the way, that these three cases have been chosen as illustrations because they indicate some of the practical consequences which result from the refusal of the English courts to recognise, in the absence of certain conditions, the validity in England of foreign divorces. The consequences in the above cases respectively were criminal liability for bigamy, incapacity to contract a second marriage and illegitimacy involving an unsuccessful claim to succeed to the property of a parent who had died intestate.

What then are the conditions which must be satisfied before English Courts will recognise the validity in England of a foreign decree of divorce?

(*a*) In this article the meaning of "Divorce" will, unless the contrary is expressly stated, be confined to Dissolution of Marriage or Divorce *a vinculo*, and will not be extended to denote Judicial Separation or Divorce *a mensa et thoro*.

(*b*) It was, in fact, at one time thought that a marriage contracted in England could not be dissolved by a foreign court: *M'Carthy* v. *De Caix*, 1835, 2 Cl. & F. 568; Cf. *Lolley's Case*, *ib.*, p. 567. The facts and the material part of the decision in *M'Carthy* v. *Caix* are admirably given in the following words taken from the reported judgment of Lord Brougham, before whom the case came for trial: "A gentleman of the name of Tuite, contracted a marriage, which was legally solemnised in England. He was himself a Dane by birth and by domicil. He removed immediately the person whom he had made his wife, from this country—the *locus contractus*, with which he appears to have had no further connexion than so far as he was married to an Englishwoman—to his own country, where his domicil continued, and in that country the marriage was dissolved by a valid decree of divorce; dissolved as far as the Danish law could dissolve it, but which divorce could not, by the law of this land, as it is fully established by the solemn opinion of the twelve judges . . . operate to dissolve, or in any manner be made to affect here an English marriage."

The first essential condition is that there should, according to English law, be jurisdiction in the foreign court to make the decree. It is the general rule that if there is no such jurisdiction in the foreign court, no English court can or will treat the dissolution of the marriage as legally effective.

The question is not one of the competence of the foreign court within its own area, though, of course, the absence of such competence determines the invalidity of a decree, but it is a question of jurisdiction generally. A court may be competent to grant a divorce, and may actually make a decree which is valid within the district where such court is situated, but English law will not recognise the decree as valid in England unless the foreign court making the decree was not only competent according to the law of the country where such decree was made but also had, according to English law, jurisdiction to make it.

English law will not, as a general rule, recognise that foreign courts can possess jurisdiction in matters of divorce unless both parties to the marriage bond are domiciled in the country whose court granted the divorce: "the domicil for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage": per Lord WATSON, in *Le Mesurier* v. *Le Mesurier*, 1895, A.C. 517.

The reasons why domicil is taken as the only true test of jurisdiction is stated as follows by Lord PENZANCE, in *Wilson* v. *Wilson*, 1872, L.R., 2 P. & D. 435, at p. 442: "Different communities have different views and laws respecting matrimonial obligations and a different estimate of the causes which should justify divorce. It is both just and reasonable, therefore, that the differences of married people should be adjusted in accordance with the laws of the community to which they belong, and dealt with by the tribunals which alone can administer those laws. An honest adherence to this principle, moreover, will preclude the scandal which arises when a man and woman are held to be man and wife in one country and strangers in another." This view was concurred in without any reservations by the Judicial Committee of the Privy Council, in *Le Mesurier* v. *Le Mesurier, supra*, and the same result was arrived at by BRETT, L.J., in his dissenting judgment in *Niboyet* v. *Niboyet*, 1878, 4 P.D. 1.

It would appear, however, from the case of *Armytage* v. *Att.-Gen.*, 1906, P. 135 (see also *Clark* v. *Clark*, 1921, 37 T.L.R. 815), that an important qualification has to be made in our statement of the rule that jurisdiction in divorce depends upon domicil. In that case a citizen of New York, who was temporarily resident in England, married an English woman. He then deserted her and went back to New York. The wife then left England and proceeded to South Dakota, where she acquired a *bona-fide* domicil. She then sued in the courts of South Dakota for a divorce, the husband appearing to defend the suit and cross-petitioning for the divorce from her. The wife was successful in her action, and later married a British subject in Denver, U.S.A., and with him returned to England, where they became domiciled. In the meantime the first husband had married again, and after five years of his second experience of married life, he petitioned to have his second marriage declared null on the ground that his first marriage was still subsisting. The first wife, then, took advantage of the provisions of the Legitimacy Declaration Act, 1858, and petitioned for a declaration of the validity of her second marriage and her first husband was made a party to these proceedings. Thus the whole question of the validity of the divorce granted in South Dakota was considered by an English court.

The husband, it will be noted, was domiciled in New York, and the wife (according to the law of South Dakota) in South Dakota. The decree was made in South Dakota, and the husband was a party to it.

The President of the English Court of Probate and Divorce, after hearing the testimony of expert witnesses on American law, was satisfied that the proceedings to which the husband had submitted gave the South Dakota court complete jurisdiction, that the courts of New York were bound to recognise the South Dakota decree as valid, and that, therefore, the English courts would, on the ground of international comity, recognise the South Dakota decree as valid in England. "The evidence in the present case," said the learned President, "shows that in the State of New York the decision of the Court of South Dakota would be recognised as valid. The point then is this: Are we in this country to recognise the validity of a divorce which is recognised as valid by the law of the domicil? In my view, this question must be answered in the affirmative. It seems to me impossible to come to any other conclusion, because the status is affected and determined by the decree that is recognised in the State of New York—the state of the domicil—as having affected and determined it."

In short then, the qualification to be made in the general rule is that the English courts treat as valid decrees of divorce granted elsewhere than in the country of domicil, provided those decrees are valid according to the law of the parties' domicil.

It may be pointed out that if, on the other hand, the country of domicil does not acknowledge the validity of a divorce obtained outside that country, the English courts will not do so. Thus, in *Cass* v. *Cass*, 1910, 26 T.L.R. 305, it was held that a second marriage entered into in New York by a woman, whose first husband was then living, was null and void, as a decree of divorce obtained by her in Dakota against her first husband, who was domiciled in Massachusetts and who did not appear in the divorce proceedings, would not be treated as valid in Massachusetts.

(To be continued.)

Submission of no Case in Criminal Trials.

BY ALBERT LIECK,
(Chief Clerk, Marlborough Street Police Court.)

IT is a commonplace of advocacy that "the accused has a complete answer to this charge." So common is it that the less astute are apt to overlook the fact that to have no charge to answer is better than to have an answer to a charge. But when, in cases where there is no evidence to go to the jury, there is no submission of "no case," not merely is a tactical advantage overlooked, but a duty is neglected: *R.* v. *White*, 1918, 13 Cr. App. R. 211.

After this duty of submitting "no case" has been discharged by counsel for the defence, if his submission is justified by the evidence, it becomes the judge's duty to withdraw the case from the jury: *R.* v. *Leach*, 1909, 2 Cr. App. R. 72. Even if no such submission be made, the judge may stop the case, but he is not bound in law to do so: *R.* v. *George*, 1908, 1 Cr. App. R. 168. But, if the case goes on, and the defendant supplies the evidence requisite for a conviction, the Court of Criminal Appeal will take the whole circumstances into account: *ibid.*; *R.* v. *Jackson*, 1910, 5 Cr. App. R. 22; and this holds, even if objection on good ground is taken unsuccessfully by counsel for the defence: *R.* v. *Fraser*, 1911, 7 Cr. App. R. 99; *R.* v. *Power*, 1919, 14 Cr. App. R. 17. The decision to the contrary in *R.* v. *Joiner*, 1910, 4 Cr. App. R. is definitely overruled: *R.* v. *Power, supra*.

The proper thing for counsel to do when his submission of "no case" is over-ridden, and he really is satisfied that the case is one which should properly be withdrawn from the jury, is to refuse to call evidence and rely upon any conviction being quashed by the Court of Criminal Appeal: *R.* v. *Leach, supra*. By taking this line, indeed, he has the additional advantage of making it very difficult for the trial judge to sum up without misdirection.

Upon what is evidence to go to a jury the case of *Parratt* v. *Blunt & Cornfoot*, 1847, 2 Cox. 242, is instructive. The case was an action in the Common Pleas for work and labour done, but the learned editor of those reports rightly inserted it "as containing an extremely useful definition of a point more frequently raised in the criminal than in the civil courts." COLTMAN, J., in a brief judgment, said: "By any evidence to go to the jury, I consider to be meant such evidence, that if the jury found in favour of the party by whom it was offered, the court would not upset the verdict."

Another way of putting the point in a criminal case is: "Has the presumption of innocence been displaced?" The statement that the prosecution are bound to prove their case is merely one form of stating the presumption of innocence. One cannot help feeling, even while giving approval to the decisions cited above in *R.* v. *Fraser* and *R.* v. *Power*, that their effect is somewhat to whittle down this great fundamental principle of criminal jurisprudence in this country.

What is true of the jury is true of the bench of justices. As judges of law they must listen to, and, in proper cases, give effect to, a submission of "no case" by directing themselves to dismiss the information or charge. This applies also to cases which they are hearing under the Indictable Offences Act, 1848. Indeed, the very essence of the function of examining justices is to determine whether there is a case to be left to a jury. They are to form an "opinion" whether the evidence before them "is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raises a strong or probable presumption of the guilt of such accused party." Indictable Offences Act, 1848, s. 25. Section 12 of the Criminal Justice Act, 1925, is silent as to submitting "no case," and some have thought that this means the defendant has no right to make such a submission at the preliminary enquiry before justices. But this is not so. From the very nature of that enquiry, and from the practice of at least eighty years, it is clear that, before making any statement or giving any evidence or calling any witnesses the defendant is entitled to submit there is no case for him to answer, and the justices must listen to his argument upon this point and to any other submission he may make as to the law.

It is obvious that the function of examining justices, an historical survival of the old inquistorial method of proceeding against an accused person, entitles them to require the calling of additional witnesses, or, if the prosecution is unwilling to call them, to do so themselves.

Even at the trial before a judge and jury, the judge has a right to call or recall a witness if he consider it in the interests of justice, and where it is submitted that there is no case to answer, if the judge can see that the case can be supplemented in a proper way, it seems eminently consistent with his judicial office that he should seek to ensure justice being done. Lord DARLING, when trying cases at Assizes, more than once insisted on the right of the judge to do this. In *R.* v. *William Sullivan*, 1922, he recalled witnesses who had been called for the prosecution, after the prisoner had given evidence, and called further witnesses after counsels' speeches; and the Court of Criminal Appeal [1923] 1 K.B., 47 upheld him, laying down quite definitely that a judge has in a criminal trial a discretionary power of recalling witnesses at any stage of the trial and of putting to them such questions as the exigencies of justice require. Nor is the power limited to merely recalling witnesses. In *R.* v. *Peel*, tried by the same judge at the Central Criminal Court on the 15th March, 1922, he said, "In a criminal case the judge has an inherent right to have a witness called," though he did not in that case exercise the right he so unhesitatingly claimed. It may be added that the right is recognised by s. 1 (2) of the Costs in Criminal Cases Act, 1908, and s. 9 (*b*) of the Criminal Appeal Act, 1907.

In courts of summary jurisdiction, where cases are often badly presented, the right is a valuable aid to justice, and should be exercised on suitable occasions by the justices. No case in which the public is interested should be allowed to go off for want of technical completeness, due, for an example, to the omission properly to prove some regulation or bye-law which is actually before the court, and creates the offence charged. It is quite proper for the defence to submit there is no case to answer, as a result of such omission, but justices who thereupon incontinently dismiss the information are not fulfilling their function as keepers of the King's peace.

The case of *Hargreaves* v. *Hilliam*, 1894, 57 J.P. 655, is very strong on this point. There was a failure to produce an order to prosecute, before the prosecution had closed their case, and the justices, on the submission of the defendant's solicitor, dismissed the information. On a case stated, CAVE, J., said, "It appears to me they did very wrong in this case . . . It is not the usual practice that a case shall not be allowed to be re-opened . . . I cannot conceive of any practice which is more detrimental to the honest administration of the law . . . So far from its being the practice that a case shall not be re-opened, my practice is always distinctly to the contrary . . . I am always ready to hear any evidence which is there ready to be tendered, and which owing to any accident or mistake or want of foresight if you like on behalf of the counsel or parties, has not been given before the case is taken to be closed."

In *Duffin* v. *Markham*, 1918, 88 L.J. K.B. 581, the prosecution closed their case without putting in a King's Printer's copy of the Bread Order, 1917, which created the offence charged. The court, on a case stated, held that the justices were wrong in refusing to reopen the case or adjourn it and remitted the case to them for further hearing.

In cases where corroboration is required by statute, and no corroboration is forthcoming, there is no case to answer, however strong be the evidence of the principal witness. But this is not true of a case where the only evidence is that of an accomplice. Such a case may be a very proper one to be left to the jury, though with the necessary caution, the giving of which in very strong terms, has now hardened into a rule of law, see *R.* v. *Feigenbaum*, 1919, 1 K.B. 431, and other cases. That case, however, shows that the silence of an accused person when charged may be corroboration of an accomplice's evidence. Far from the judge being compelled to say there is no case to answer he may comment on the failure of the accused to give evidence, see *R.* v. *Rhodes*, 1899, 1 Q.B. 77; and the jury will probably, and not improperly, draw an unfavourable inference from the defendant's omission to deny on oath the truth of the accomplice's statement. This is really a very strong instance of a defendant not denying the truth of a statement made against him, when, if innocent, he could be reasonably expected to do so, behaviour on his part which is at least some evidence tending to establish guilt.

The Courts of Scotland.

Continued from page 1102.

APPEAL.

Two forms of appeal are open to the litigant in the Sheriff Court. He may appeal to the Sheriff Principal or to either division of the Court of Session. If he appeals in the first instance to the Sheriff Principal he is usually entitled to appeal to the latter's judgment to the Court of Session. This system of double appeal is difficult to justify and some modification may be expected from the Report of the Commission which recently sat to consider procedure in all the courts. Final interlocutors are usually appealable within three months, unless previously extracted or implemented, others within fourteen days. In districts like Edinburgh and Glasgow where the Sheriff Principal is resident the appeal is quickly disposed of, but in other districts the system of appeal to the Sheriff

Principal is not so satisfactory. The procedure in an appeal to the Sheriff Principal is very simple. A note of appeal is lodged by the appellant. It merely states that the interlocutor of the Sheriff is appealed against, and intimation is made by the Sheriff Clerk to the respondent. No other additions are made to the process. There is a provision which enables the Sheriff Principal to order parties to lodge a reclaiming petition and answers thereto and to dispense with a hearing, but this is rarely resorted to except perhaps in an appeal from some very remote district. If the appeal is to the Court of Session the procedure is the same, except that the record and other relevant documents must be printed. The appeal then proceeds in the same manner as an appeal from a Lord Ordinary.

The Sheriff Summary Court.

Subject to the provisions relating to the Small Debt Court all actions competent in the Sheriff Court where the value of the cause exclusive of interest and expenses does not exceed £50 must be brought in the Sheriff Summary Court only. The action is begun by a writ in the same form as an action in the ordinary court but the first deliverance commands the defender to appear in answer to the writ on a day certain. Written defences may be lodged or the defender may appear and state his defence at the bar. Thereafter the cause proceeds in the manner directed by the Sheriff in as summary a way as possible. The evidence, if there is a trial, is not usually recorded. There is an appeal to the Sheriff Principal only whose judgment is final and not subject to review. The fees in the Summary Court are smaller than those prevailing in the ordinary court, and it provides an inexpensive and summary method of dealing with disputes involving comparatively small amounts which are common in every neighbourhood.

The Small Debt Court.

The volume of work which is annually carried through in this court is ample testimony to its usefulness and necessity. In every Sheriff Court the Sheriff holds a Small Debt Court on a different day of the week from that on which the Ordinary Court is held. In a busy district like Glasgow the court is held on every day of the week. The court has privative jurisdiction in all actions not expressly excluded where the sum involved does not exceed £20. Proceedings are begun by a summons running in the name of the Sheriff Principal, and addressed to Sheriff Officers of the court. Printed forms of summons are obtained at all the Sheriff Court offices. The warrant to serve the summons is signed by the Sheriff Clerk and commands the defender to appear in answer on a day certain. The *induciæ* is six days. The summons is served usually by a solicitor by registered post. When the summons calls the defender states his defence at the bar which the Sheriff notes on the principal summons. In the provincial courts it is usual for the Sheriff to assign a diet for trial of the cause on some future day certain, but in Glasgow the pursuer must be prepared on the day on which the case calls to proceed to trial except on some very good cause shewn. No notes of evidence are taken and the procedure is quite elastic compared with that in the Sheriff's Ordinary Court. There is practically no appeal from the judgment of the Sheriff and from that cause it has been slyly remarked that it is the court the Sheriff himself is most partial to! It is true there is a form of appeal to the High Court of Justiciary on the grounds of oppression or gross deviation from the prescribed forms. It will be gathered however, that to prove the grounds of such appeal is difficult and the result is that appeals are so rare that there are few practitioners who could instruct the proceedings in such an appeal without recourse to a textbook. Provision is made where some important point of law is involved to have the case sent for trial to the Ordinary Court. The great advantage of the Small Debt Court is the speed with which the matter in dispute is disposed of, and the small expense involved. The parties may appear themselves or by solicitor, but even where the case is defended and witnesses travelling expenses a considerable item we have never known the expenses between party and party exceed a £5 note.

Some Other Functions of the Sheriff Court.

In addition to the jurisdiction of the Sheriff Court already described, and its criminal jurisdiction, the court exercises a wide administrative jurisdiction in matters of estates of deceased persons (called commissary proceedings) workmen's compensation and bankruptcy. There are also a variety of matters it deals with under special statutes which are too numerous to mention. It may be useful however to deal with commissary matters and bankruptcy.

Commissary Matters.

In Scotland trustees and executors are always the same persons. In wills the form usually adopted is to appoint so many persons as trustees of the testator, and in a subsequent clause appoint the same persons as the testator's executors. Such executors are called executors nominate, and even where the testator fails to appoint his trustees also his executors the former will be confirmed as executors nominate in the absence of any other appointment to that office in the will. Executors appointed by the court are called executors-dative. As in England, the matters relating to the administration of the estates of deceased persons were formerly dealt with by the Ecclesiastical Courts. This in time became a separate civil court called the Commissary Court, which was subsequently merged (except at Edinburgh, where it still survives) in the Sheriff Court. Executors-nominate or dative cannot act until confirmed by the Sheriff. There is no proving the will as in England. As soon as the inventory of the deceased's estate has been assessed for estate duty and the duty paid, it is lodged with the oath or affidavit of one of the executors, together with the will docquetted and signed as relative thereto at the office of the Sheriff Court district in which the deceased had his domicile. If the deceased had a Scots domicile, but in no particular Sheriffdom then the documents are lodged with the Commissary Clerk at Edinburgh. If the deceased left no will an application must first be made to the Sheriff or the Commissary Court at Edinburgh, as the case may be, to have an executor or executors-dative appointed. In this application the nearest of kin are preferred. In due course the Sheriff issues a document called Confirmation. This, in some respects, is a similar document to the English probate, in that it authorises the executors to administer the estate and is authority to all persons to pay money over to them. Unlike probate, however, it has annexed a copy of the inventory of the deceased's personal estate as given up for death duty purposes. It does not contain a copy of the will. Thus, unlike England, it is the Sheriff who clothes the personal representatives with authority to act, and not the High Court, and all preliminary questions are dealt with by him except such questions as proving the tenor of a lost will or deciding the validity of a will where the same is impugned on some ground of illegality. This is so irrespective of the amount of the estate, and beneficiaries can always keep the costs of an accounting low by bringing against the executors or trustees in the Sheriff Court an action of count reckoning and payment.

Bankruptcy.

The whole administration of bankruptcy matters in Scotland is conducted in the Sheriff Court. Bankruptcy may be applied for in the Bill Chamber of the Court of Session, and must be, if the bankrupt has not carried on business or resided within any one Sheriffdom for a year immediately preceding the petition for sequestration. But once the deliverance awarding sequestration of the bankrupt's estate has been pronounced the process returns to the Sheriff in whose district the bankrupt resides or carries on business for all further procedure. There are no official receivers as in England. The solicitor of the petitioning creditor is responsible for all steps up to the first

meeting of creditors for the appointment of a trustee, and has summary access to the court for all authority necessary to preserve the estate pending the appointment of the trustee. As soon as the trustee is appointed he comes under the supervision of an official called the Accountant of Court, who in general sees that all statutory requirements are complied with and must report to the court before the trustee is discharged. Except where the substantive law differs, the procedure regarding advertisement preferences and lodging of claims and payment of dividends follows much the same course as in England, but in general the proceedings are much less under the direct supervision of the court compared with England. It may be said, however, that in one feature the two systems are closely allied—at the end of the day there is seldom much left for the general body of creditors!

A Conveyancer's Diary.

By D. HUGHES PARRY, M.A., LL.B.

Settled Land and Land held Upon Trust for Sale.

No branch of the law seems to be less understood than that bearing on the fundamental distinction existing between settled land and land held upon trust for sale. Some confusion now existing is, no doubt, accounted for in a great part by failure to notice the omission in the S.L.A., 1925, of s. 63 of the S.L.A., 1882, the general effect of which was to make (subject to certain modifications) land held upon trust for sale settled land for the purposes of the Settled Land Acts, the person for the time being beneficially entitled to the income of the land until sale being deemed to be the tenant for life; though after the Act of 1884 such person could not exercise his powers without the leave of the court. This omission brings into prominence what is, and nearly always has been, a clear-cut distinction between land held upon trust for sale and settled land. In the latter case it is the land itself that is settled, while in the former it is the proceeds of sale; one would have thought that this was reasonably simple.

Throughout the Birkenhead Acts the intention of the Legislature to maintain this distinction is manifest; where that intention was not unambiguously expressed in the 1925 Acts, the Amending Act of 1926 has sought to place it beyond dispute.

There exists, however, a misty borderland of cases—misty for the most part in consequence of the ingenuity displayed by conveyancers in framing settlements of land to express the extraordinary wishes of their clients—in which some difficulty has been encountered, and is still being experienced in deciding whether land is in fact held upon trust for sale or is settled land. It is the object of this article to consider and explain the principles applicable to such cases.

The first difficulty which is met with is one which was common under the old law, namely, to construe the words used by the settlor or testator with a view to discovering whether he meant to limit the land to trustees upon trust for sale or whether he meant to give them only a power of sale—a power which has now been relegated to a position of obscurity.

This difficulty may be illustrated by reference to three leading cases. In *Re Hotchkys*, 1886, 32 Ch. D. 408, there was a gift by will to trustees upon trust at their discretion to sell the trust property, to invest the proceeds after payment of debts and funeral expenses and to hold the real and personal estate, money and securities upon trust to pay the rents and dividends to E for life, and then to V absolutely. The Court of Appeal decided that there was no trust for sale, but a power in the form of a trust. "In my opinion," said Cotton, L.J. (*ib.*, at p. 416), "although . . . the direction as to the sale is in form a trust, it is not a trust for the conversion of the whole of the estate immediately on the death of the testatrix, when the will comes into operation, but a power in the form of a trust giving them a discretion whether to sell or not—a power to sell such part of the real estates as they shall in their discretion think it desirable to sell. Undoubtedly, they may if they think it desirable . . . sell the whole, but there is not a direction to them to sell the whole."

Again, in *Re Crips*, 1906, 95 L.T. 865, Kekewich, J., decided that a gift by a testator of the residue of his real and personal estate to trustees upon trust, either to allow the same to remain in its state of investment at his death, or, to sell as and when the trustees in their absolute discretion thought fit, and to hold the investments upon trust to pay the income as therein mentioned was, having regard to the will as a whole, a trust for sale within the meaning of s. 63 of the S.L.A., 1882. A general intention was shown by the testator that the property was meant to be converted.

Finally, in *Re Johnson*, 1915, 1 Ch. 435, a devise and bequest of real and personal estate to trustees upon trust, either to retain it in the same state as at the testator's death, or to sell and convert it into money at such times as the trustees thought fit, to invest the proceeds and to hold the trust estate on trust to pay the income as therein mentioned, were held to create an immediate trust for sale with a mere power of postponement. The will, in this case, also, showed a general intention, which could be gathered from all the material clauses thereof, to effect a conversion of the property.

The line originally drawn between a trust for sale and a power of sale seems, then, to have been in parts a fine one; it was finest of all in those cases where the trust for sale contained an indefinite power of postponement (now incident to every trust for sale unless the contrary appears: L.P.A., 1925, s. 25 (1)), and a power of sale was couched in terms of a trust for sale.

There can be little question that when considering for the first time the construction of documents coming into operation before 1926, in the interests of consistency and practical convenience, the tendency, in view of L.P.A., 1925, s. 25 (4), will be to lean in favour of a trust for sale, rather than a power of sale which would involve the execution of a vesting instrument.

Such difficult questions of construction should no longer occur in the case of dispositions or settlements coming into operation after 1925; for, by the L.P.A., 1925, s. 25 (4) a trust "to retain or sell land" is to be construed as a trust for sale with a power to postpone sale. Accordingly, it seems fairly clear that *Re Hotchkys* (being in substance a trust to retain or sell) could no longer be followed in the construction of documents executed after 1925. This is the view adopted in "Wolstenholme and Cherry," vol. I, p. 179, and "Prideaux," vol. I, p. 674.

(*To be continued*).

Landlord and Tenant Notebook.

Some Recent Scottish Decisions on the Rent Acts.

Inasmuch as the Rent Restriction Acts apply to Scotland as well, and Scottish decisions on the Acts, although not binding on English courts, are nevertheless regarded as being of some authority, it may be of advantage to refer to some of these recent Scottish cases.

Service of Notice of Increase of Rent.

In *Guthrie and Others* v. *Stewart*, 1926, Sc. L.T.R., p. 475, the question in issue was whether a notice of intention to increase rent, as required by s. 3 (2) of the Act of 1920, had been duly served on the tenant, so as to entitle the landlord to the increased rent. In this case the tenant denied having received the notice. Although no witness for the landlords could actually depose to the service of the notice, evidence was nevertheless

given on their behalf, *inter alia*, that the ordinary routine had been followed when the notices of increase, which was one of several, happened to be served, and that the notice in question was not returned to the office from which it issued, which would ordinarily have been the case had the notice not been served by the clerk, who was instructed to serve it. In the Sheriff Court it was held that no sufficient evidence of service had been given, the matter having been treated as one to which particular solemnities were attached, and which accordingly required the strictest proof. On appeal, however, the Second Division held that the question was one entirely of fact, and that the Act prescribed no particular formalities which had to be observed with regard to the service of a notice of intention to increase rent. As Lord Anderson put it in his judgment (*ib.*, at p. 477): "The section of the Act which deals with the matter of notice is s. 3 of the statute of 1920, s-s. (2), and that section provides three things as regards notice of increase of rent. The first is that the notice has to be in writing; the second is that it has to take a form suggested in the schedule; and the third is that it has to be served upon the tenant. The statute is silent as to the mode of service, and it seems to me that in a case of this sort all that we have to look for is reasonable evidence of service, whatever form of service was adopted. In other words, this does not appear to me to be a case where it is necessary to have those solemnities of protection which are essential when one is dealing with the constitution or transmission of heritable rights, and something less than that is all that is necessary." The onus of proof of service of the notice is, of course, it need hardly be said, on the landlord.

Notice of Increase claiming less than permitted Increase of Rent.

Whether a notice of increase of rent, in which the landlord claims an increase of rent, which is, however, less than the full amount which he might claim under the Acts, is or is not a valid notice, *pro tanto*, was one of the questions considered by the court in *Thomson* v. *Ure*, 1925, Sc. L.T.R. 122. There the standard rent was £12 per annum, and the landlord paid rates, so that the net rent was to be arrived at by deducting from the standard rent of £12 the amount of the rates paid by the landlord (s. 12 (1) (*c*) of the Rent Act of 1920). The rates amounted to £2 0s. 5d. per annum, but the landlord also received from the tenant 5s. as his proportion in respect of the charge for stair and gas, which the landlord paid to the Glasgow Corporation. Although the stair and gas payment was not a rate, which was to be deducted with the other rates (£2 0s. 5d.) from the standard rent in order to ascertain the net rent, the landlord nevertheless deducted this payment, so that the net rent was incorrectly stated in the notice, being, however, *less* than the amount which the landlord was entitled to insert in the notice. The court, nevertheless, held that the notice of increase was a good notice, *qua* the increase actually claimed therein, which was, of course, less than the actual increase to which the landlord was entitled. In his judgment the Sheriff said (*ib.*, at p. 124): "It is impossible to my mind to read the schedule (i.e., to the 1920 Act) without perceiving that, as the permitted increase is a certain percentage of the net rent, the object of stating (*a*) the standard rent and (*b*) the net rent, is the severely practical one of enabling the tenant to check the amount of the proposed increase, and so secure himself against an overcharge; and that it is not a device for supplying him with material for academic calculations, however absorbing, or for penalising the landlord for some harmless deviation from strict mathematical accuracy . . . I fail to see any ground for holding that a landlord who understates the net rent and so asks for a smaller increase than the law permits is to be allowed no increase at all, and it seems immaterial whether the understatement is due to mere stupidity or to some unusual kindness of heart." (*Cf.* also *Smith* v. *Groat*, 40 Sh. Ch. Rep. 225.)

Amendment by Landlord of Notice of Increase.

Apart from the power of amendment which is vested in the court by s. 6 (1) of the Rent and Mortgage Interest (Restrictions) Act, 1923, it would seem that where an invalid notice has been served by a landlord, the notice may subsequently be amended by the landlord on discovery of his error, the notice, as amended, takes effect, of course, as from the date of the amending notice. This point is dealt with also in the case of *Thomson* v. *Ure*, *supra*.

The second notice of increase, which was considered in that case, also contained an error, the error, however, being this time in favour of the landlord and arising under the following circumstances:—

At the time when the second notice was served on the tenant the district assessor had not made up the valuation roll for the year. The landlord, assuming that the assessable value of the house would be increased by the addition of the increases of rent permitted by the Rent Act, had calculated the increase on account of rates, permitted by s. 2 (1) (*b*) of the Act of 1920, on that basis. The assessor, however, did not enter the house in question on the valuation roll at the higher figure, the figures remaining as they were. The landlord, anticipating that something of the sort might occur, had sent the tenant a further notice prior to the making up of the valuation roll to the effect that in the event of the valuation not being increased the increase claimed on account of rates was to be cancelled. The court, while holding that the first notice when served was clearly bad, inasmuch as it claimed too much, nevertheless held that the notice as subsequently corrected was valid. In his judgment the learned Sheriff said (*ib.*, at p. 125): "If necessary I should be disposed to hold that this notice (i.e., the first notice) was bad when served in respect that it asked too much. But even on that footing two questions remain: (1) whether it was susceptible of rectification, and (2) whether it has been rectified in fact. There is nothing in the Act, so far as I have seen, which appears to prevent a landlord who had served a notice in which the net rent was slightly overstated . . . from correcting that notice next day by a *written* intimation to the tenant; and if that be so, then it is a question of circumstances whether in any particular case the correction has been made. Here, it seems to me, the object of the Legislature was fully served by the information given to the tenant, and it also seems to me that the acting of both parties show that they regarded the notice as having been properly corrected."

It would seem, however, that the general principle that an erroneous notice may be subsequently amended by the landlord must be read subject to certain qualifications. It is clear that, where an invalid notice has been served, that notice is of no effect whatever, and that no increase can be legally claimed under it. If that notice is subsequently amended, it is submitted that it can only be amended by a written notice, and that such subsequent notice must not only give the amended figure, but must also state that the increases in question are to be payable after one clear week (in the case of an increase on account of rates) and four clear weeks (in the case of other increases)—*cf.* s. 3 (2) of the 1920 Act—from the date of the amended notice. If there is no such further statement in the amended notice, then it is submitted the notices will both be bad, since the date or dates when the increases are to become first payable are material parts of the notice to increase and must be correctly stated therein.

(*To be continued.*)

HUNGARIAN PROPERTY. SIXTH DIVIDEND.

The Board of Trade is informed by the Administrator of Hungarian Property (Cornwall House, Stamford-street, London, S.E.1), that a sixth dividend of 2*s.* 6*d.* in the £ will be paid to all creditors who are entitled to participate.

The first distribution of the dividend will be made on 22nd November, 1926. An individual notice will be sent to each creditor as and when he becomes entitled to participate.

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

UNDIVIDED SHARES—SALE OF AN EQUITABLE INTEREST AFTER 1926—STIPULATION THAT PURCHASER SHOULD BECOME A TRUSTEE—EFFECT.

535. *Q.* A and B were tenants in common of Black-street property prior to 1926, and B on her marriage in 1923 settled her share (three trustees). A sells his "equitable interest in an undivided half share" by auction, and by the conditions of sale he is to retire from the trusteeship and endeavour to have the purchaser appointed a new trustee in his place.

(1) On completion of the purchase of the equitable interest where is the legal estate in the property vested (*a*) If A has not retired from the trusteeship? (*b*) If he has retired from the trusteeship?

(2) If one of the marriage settlement trustees is the purchaser of A's share is it necessary for him to be appointed a trustee for sale of the whole property?

(3) Would it not be desirable for the trustees for sale after the purchaser's appointment to execute a declaration of trust?

A. (1) On the facts stated it is not agreed that A is a trustee at all. On 1st January, 1926, this case was not within the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), (2) or (3), therefore (4) applied, and the Public Trustee is trustee until divested under (4) (iii). In the circumstances it is suggested that A should request B to join with him in appointing the purchaser and her own trustees or some or one of them as trustees to oust the Public Trustee.

(2) No; but he would no doubt require appointment in his own interest.

(3) Such a declaration would not be necessary, and there would not seem to be any particular advantage in it.

SETTLED LAND—POSSESSION OF DEEDS BY TENANT FOR LIFE—SALE BY HIM SUPPRESSING SETTLEMENT—PRECAUTIONS AGAINST.

536. *Q.* A the owner in fee of a freehold estate makes a settlement of the property on his marriage, the trusts being for A the settlor for life, remainder to B the wife, for life, remainder to the eldest son of the marriage in fee. A being first tenant for life is entitled to the deeds, and there is nothing to prevent him from suppressing the settlement. How can the interests of the remaindermen be protected? Prior to 1926 they would have taken legal estates, but apparently now they only have equitable interests. Prior to 1926 a purported conveyance by A of the fee simple to D, a purchaser, for value, without notice, would only have passed A's life estate, and the remainders would not have been affected. Apparently, now D, the purchaser, will acquire the legal fee, and the interests in remainder will be defeated. There is no provision in the Land Charges Act for registration of the interests in remainder. Would it be advisable to endorse A's title deeds or the principal deed with a memorandum setting forth the fact that A has settled the property by a certain deed, stating date, parties, &c.?

A. The proper time to take precautions against such fraud is before the settlement is made, and the wife's advisers should certainly insist on the endorsement of a notice of the settlement on a title deed as suggested. A sale by a tenant for life otherwise than under the S.L.A., 1925, would not be protected by s. 2 (1) of the L.P.A., 1925, and the purchaser would be bound by the notice. Perhaps an even more effective precaution—since a tenant for life dishonest enough to sell for his own benefit would not scruple to erase an endorsement if he could do so—would be to insist on registration of the land. The reversioners would then be protected by s. 86 of the L.R.A., 1925, and the restriction of Form 9 or 11 (according to circumstances) of the Land Registration Rules, 1925, see rr. 36-9. Or the settlement could be made in the form of a trust for sale.

UNDIVIDED SHARES—LAND VESTED IN ONE PERSON BENEFICIALLY AND IN ANOTHER AS TRUSTEE—SALE.

537. *Q.* In 1869 two freehold houses were conveyed as to one undivided moiety to the use of A his heirs and assigns for ever, and, as to the other undivided moiety, to the use of B his heirs and assigns for ever, dower being barred in each case. In 1909 B died having appointed C (his wife), and D executors and trustees (who proved the will), and devised and bequeathed all his real and personal estate to his trustees, upon trust for sale and conversion with power to postpone the sale and conversion for as long as his trustees should think fit, and directed his trustees to pay the income of his estate to C for life and thereafter to hold the estate in trust for all his children as therein mentioned. D died, and C is now surviving trustee. There are children living. In July, 1926, A died having appointed E, F and X his executors and trustees, E and F proved the will, and X renounced and will disclaim. Testator after specific and pecuniary bequests bequeathed the residue of his real and personal estate to a brother, nephews and nieces in certain shares mentioned. There was no trust for sale, but testator at the end of the will directed his trustees might postpone the sale and conversion of any part of his real and personal estate for so long as they should deem advisable, the net rents and income in the meantime to be paid to the persons entitled to the proceeds of such sale and conversion as if such sale and conversion had been actually made. Estate duty was paid on A's moiety of the property value £125 as personal estate in equity. It is now desired by all parties to sell the whole of the property. Who can make a title and how?

A. Immediately before the commencement of the L.P.A., 1925, the property was held in undivided shares in possession, and as the entirety thereof was not held in any of the ways mentioned in *ib.*, 1st Sched., Pt. IV, para. 1, sub-paras. (1), (2) or (3), sub-paragraph (4) applied, thus vesting the property in the Public Trustee. Assuming that the Public Trustee has not been requested to act, E, F and C and any beneficiaries who are of full age and whom it is convenient to join should together appoint new trustees for sale in place of the Public Trustee pursuant to sub-para. (4). Such trustees would then make title as trustees for sale in exercise of their statutory powers: L.P.A., 1925, s. 28.

REGISTRATION OF LAND CHARGES—RESTRICTIVE COVENANTS IN LEASES—PURCHASE OF REVERSION.

538. *Q.* A, being the lessee under a lease dated before 1926, for a long term of certain premises, purchased in 1926 the freehold reversion from the ground landlord, and in the conveyance to him thereof he has covenanted to observe and perform such of the covenants by the lessee contained in the lease as relate to the value, description, user and enjoyment of the property demised by the said lease, and to the buildings, walls and fences to be erected and maintained on the land, so far as the same remain to be observed and performed. In view of s. 10, s-s. (1), Class D (ii), of the L.C.A., does such covenant require to be registered thereunder?

A. Yes. This covenant is not a covenant made between a lessor and lessee but between a vendor and purchaser; though, for purposes of reference only, the lease will still have to be looked into. It is assumed that the lease does contain covenants which affect the user of the land.

ENFRANCHISEMENT OF COPYHOLDS—PRODUCTION OF ASSURANCES TO STEWARD—PAYMENT OF FEES.

539. *Q.* On the 1st January, 1926, A and B (trustees) were on the Court Rolls as owners of certain copyhold hereditaments. On the 19th August the property was sold, and on the 8th September the purchaser gave notice to the deputy-steward to redeem the manorial incidents. The conveyance has been produced to the deputy-steward, but the purchaser has refused to pay to the deputy-steward any fees upon the production of the deed, upon the ground that the notice served relieves him from the duty of paying the same. Your opinion is desired—(1) Whether the purchaser is "tenant" and entitled to serve the notice above referred to; (2) Does such notice extinguish the manorial incidents? (3) Is the purchaser liable to pay any fees? (4) Is the production to the steward without payment of any fees a compliance with the requirements of s. 129 of the L.P.A., 1922?

A. On the 1st January, 1926, the fee simple became vested in the trustees, who were tenants on the Court Rolls and were presumably trustees for sale (see the L.P.A., 1922, 12th Sched., para. 1 (8) (*e*) (*v*)). On sale to the purchaser, it became vested in such purchaser, subject to production of the conveyance to the steward within six months. What is called in the question a notice to "redeem the manorial incidents" which was served on the steward, was, it is presumed, a notice under s. 138 (1) (*b*) "requiring the ascertainment" of the compensation to be paid to the lord for the extinguishment of the incidents. Although such notice operates to extinguish the manorial incidents, it is provided by cl. (i) to s. 138 (1) that "the extinguishment shall not extend to or affect the right to enforce any manorial incident which has become due or enforceable before the date of the extinguishment." Anything due, therefore, in respect of manorial fees, before the service of the notice in question, ought to be paid. Any further fee on the actual production of the conveyance (beyond the fees previously due) would not seem to be payable if the notice was served before the conveyance was produced to the steward; since on such service the incidents are extinguished, excepting rights in respect of the same already due or enforceable. It follows, therefore, that in order to comply with s. 129, it is necessary not merely to produce within the six months the conveyance to the steward, but to pay any fees due or enforceable before the date when the notice in question was served.

PURCHASE OF PROPERTY SUBJECT TO COVENANTS TO REPAIR—LIABILITY OF PURCHASER.

540. *Q.* A owned a block of five cottages, with a yard and a block of privies and ashes-places in same. Four of the cottages have been sold, the conveyance in each case including a portion of the yard adjoining the cottage, with the right to use one of the privies and ashes-places (without specifying any particular one), and each purchaser in his conveyance covenanted with A to bear "a reasonable proportion of the cost of maintaining and repairing the yard and the conveniences and ashes-places and keeping the same in good repair, order and condition." The remaining premises—which include the fifth cottage, the privies and ashes-places and the unsold portion of the yard—have now been agreed to be sold to B, subject to the rights over the yard, privies and ashes-places, granted to the respective purchasers of the other four cottages. The local authority are now requiring the privies to be converted into water-closets, and when a conveyance to B has been executed a formal notice will be served on B as owner of the land on which the privies and ashes-places are situated. What will be B's position?

A. The local authority may be proceeding under s. 36 of the P.H.A., 1875, but more probably under s. 39 of the P.H.A., 1907. The repairing covenant contained in the conveyances of the four cottages first sold is of no assistance to B in this matter, the work going quite beyond mere repair. The covenant is entirely different in its wording from the covenant in *Foulger* v. *Harding*, 1902, 1 K.B. 700, or in *Re Warrener*, 1903, 2 Ch. 367. It would appear that if the work is left to be done by the local authority—through non-compliance by B with the notice—s. 39 (4) of the Act of 1907 will require a moiety of the expenses to be borne by the local authority. In such case the question arises how the remaining moiety has to be borne. It seems open to question whether B is the "owner" of the privies and ashes-places within the meaning of the statute. By s. 4 of the P.H.A., 1875, the expression "owner" means "the person receiving the rack rent or who would receive the same if the premises were let at a rack rent." B will not receive a rack rent in respect of the premises, and it is difficult to see how he could let the same at a rack rent, having regard to the easements to which the same are subject. Independently of this point, however, it will be seen that s. 39 (4) of the P.H.A., 1907, provides that a local authority may by notice "to the owner or owners of a building" require the existing closet accommodation "provided at or in connection with the building" to be altered so as to be converted into a water-closet. Under this provision, therefore, the person to be served with the notice is not necessarily the owner of the site of the accommodation, but the owner or owners of the building in connexion with which the accommodation is provided. In the present case, therefore, the owners within the section would appear to be the owners of all the five cottages having the benefit of the accommodation; and accordingly all such owners ought to share in bearing the expense of the proposed improvement.

PRE-1926 MORTGAGE OF FREEHOLDS AND COPYHOLDS—EFFECT OF NEW LEGISLATION.

541. *Q.* By a mortgage dated prior to 1926 freeholds were conveyed to a bank by way of mortgage, and the same deed contained a covenant by the mortgagor with the bank and one, A.B., to surrender certain copyhold property to the use of the said A.B., his heirs and assigns in trust for the bank. The copyhold property was subsequently surrendered to the use of the said A.B., his heirs and assigns, in trust for the bank, such surrender to be void on payment to the bank of moneys due. A.B. was not admitted and is dead. The property has been sold and the bank will be paid off out of the purchase money. The question now arises as to whether the bank on 1st January, 1926, acquired the term of years in respect of the property formerly copyhold under the L.P.A., 1922, 12th Sch. (1) (*f*), or whether A.B. or his personal representatives, as the case may be, acquired the term?

A. The opinion here given is that by the joint effect of the L.P.A., 1922, 12th Sch. (1) (*f*) and L.P.A., 1925, 1st Sch., Pts. II and VII, the term of years became vested in the bank.

UNDIVIDED SHARES—RECITAL OF FACTS AFFECTING EQUITABLE INTERESTS ON APPOINTMENT OF NEW TRUSTEES.

542. *Q.* In 1924 freehold property was conveyed to A, the purchase money being provided as to two-fifths by A, two-fifths by B, and one-fifth by C. Receipts were given by A to B and C for the shares of the purchase money contributed by them but no declaration of trust in favour of B and C or other formal document defining their interests in the property was executed by A. C died in November 1924 having appointed A and D executors and trustees of his will and given the residue of his estate (including his one-fifth share of the property) to them upon trust for sale. Under the 1st Sched. Pt. IV, para. 1 (i), of the L.P.A., 1925, the legal estate appears to be now vested in A upon the statutory trusts but the appointment of another trustee will be necessary before he can sell. It is considered desirable that B and D should be appointed

new trustees with A, and the question arises as to what form the appointment should take. To recite all the facts and disclose the equitable interests in the appointment would appear to be contrary to the general intention of the Act that equitable interests should be kept off the title but how otherwise can an intelligible document be framed ?

A. The new legislation does not render it improper to show where necessary how the equitable interests were vested prior to 1926. It is proper to do so in so far as it is necessary to show who can appoint new trustees; after the appointment is made, the legal estate only need be traced.

UNDIVIDED SHARES—JOINT TENANTS—DEATH OF ONE IN 1926—TITLE.

543. *Q.* In the year 1921 Blackacre was conveyed to A and B (father and son) presumably as joint tenants. In 1926 A died, leaving a widow, and by a document which purports to be a will, he left all his real and personal property to his wife absolutely, and appointed C his executor. The widow now desires to settle her moiety of the property on herself for life and on her death on B absolutely. It is particularly desired that the will should not be used as a document of title owing to its doubtful validity. How are the widow's wishes to be carried out if she desires a settlement by will or by deed ?

A. No difficulty should arise in this case. On 1st January, 1926, A and B held on trust for sale by virtue of s. 36 (1) of the L.P.A., and on A's death B was left sole trustee for sale. To sell and give valid receipt for the proceeds he must appoint a co-trustee (see T.A., 1925, s. 14 (2) (*a*), as amended by the L.P. (Amend.) Act, 1926, Sched.), but when he has done this, they can give a good title. Thus the documents dealing with the widow's equitable moiety will be off the title altogether.

UNDIVIDED SHARES—MOIETY VESTED IN PERSON BENEFICIALLY AND OTHER MOIETY VESTED IN HIM AND ANOTHER AS EXECUTORS—SALE.

544. *Q.* By an indenture of partition and conveyance dated 15th November, 1894, E.L.R., L.C.R. and M.J.R., residuary devisees under the will of W.R., conveyed to E.H.W. certain freehold premises to the uses then following, viz. : "As to one equal half part or share of and in the same to the use of the said L.C.R. her heirs and assigns for ever and as to the remaining half part or share of and in the same to the use of the said M.J.R. her heirs and assigns for ever." In 1924 the said M.J.R. died, having by her will appointed L.C.R. and P.H. executors and trustees and having devised the residue of her real and personal estate to the said L.C.R. absolutely. L.C.R. and P.H. proved the will on the 14th February, 1924, but no assent to the devise to L.C.R. has ever been given. The freehold premises are now to be sold.

(1) Will an assent by L.C.R. and P.H. to the devise under the will of M.J.R. effectively vest in L.C.R. the undivided share of M.J.R. and enable L.C.R. to convey the entirety of the legal estate as beneficial owner ?

(2) Alternatively, are L.C.R. and P.H. trustees holding the entirety upon the statutory trusts for sale ?

A. On the 1st January last the property was vested as to one moiety in L.C.R. absolutely and beneficially, as to the other moiety in L.C.R. and P.H. as personal representatives. Therefore, L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), applied to vest the entirety of the land in the Public Trustee. New trustees (say L.C.R. and P.H.) displacing the Public Trustee have to be appointed by L.C.R., and a beneficiary as persons interested in more than half of the land, and the new trustees can convey as trustees for sale. It may be as well for P.H. also to join in making the appointment.

Reviews.

Scottish Maritime Practice. By A. R. G. MCMILLAN, M.A., LL.B. Edinburgh and Glasgow : William Hodge & Co., Limited. 1926. xliii, 459 pp.

This work fills what has long been a conspicuous gap in the Scottish practitioner's library, for, since the abolition of the old Court of Admiralty for Scotland by the Court of Session Act, 1830, the only book, so far as we recall, touching the subject is Neill's "Forms of Proceedings in Maritime Causes before the Sheriff Courts in Scotland," which was published nearly fifty years ago and, as its title indicated, not purporting to deal with maritime law and practice as a whole. Mr. McMillan has thus been fortunate in discovering a tract of legal territory practically untouched, and he has produced a work at once extremely interesting and valuable. While, as he points out, the principles of maritime law are universal and thus the same in Scotland as in England, Scotland has its own procedure which differs radically on many points from that in use here, hence the necessity for the Scottish practitioner of a work treating specifically of the procedure peculiar to Scotland. One point, for example, in which Scots law differs from English—a feature, it is true, not peculiar to, although particularly useful in, maritime causes—is that by the former a right to proceed against a foreigner may be obtained by arrestment *ad fundandam jurisdictionem* of any property belonging, or debts due, to him in Scotland. Thus in Scotland, as Mr. McMillan points out, it is possible to proceed against a foreign shipowner even if the ship which has given rise to the claim has been lost at sea, or has never proceeded to a Scottish port. Again, in Scotland there is no form of action corresponding strictly to that of the English action *in rem*, but the result achieved by the latter action has been practically secured also in Scotland by the form of summons printed in Appendix IV to this work. These, and kindred matters of procedure are fully discussed, while the practice applicable to particular claims—such as mortgage, bottomry, collision damage, salvage, towage, wages and disbursements, and limitation of liability—are also dealt with at length, English as well as Scottish decisions being freely cited. The appendix contains the relevant statutes—beginning with the Act of 1681 : "Concerning the jurisdiction of the Admiral Court"—Acts of Sederunt, Rules of the Court of Survey, the Shipping Casualties, etc. Rules, 1923, and a collection of useful forms, these being followed by an excellent index.

A Treatise on the Law of Prize. By C. JOHN COLOMBOS, LL.D. With an Introductory Chapter by A. PEARCE HIGGINS, C.B.E., K.C., LL.D., Whewell Professor of International Law in the University of Cambridge. *The Grotius Society Publications*, No. 5. 1925. London : Sweet & Maxwell, Ltd. pp. xxx and 384.

Dr. Colombos can justly claim to have written a book which is bound to be of great service both to the practitioner and to the student. Both will find in it a lucid and up-to-date exposition of British Prize Law. The foreign decisions, carefully selected and covering the judicature of all the belligerent Prize Courts in the World War, except Turkey, constitute a distinctive feature of the book and a welcome departure from the habit of ignoring the pronouncements of non-British Prize Courts.

The chapter on Prize Courts and the law administered by them, states with praiseworthy precision that, although they are not international tribunals, they nevertheless administer international law. This truth has been obscured of late by the pedantic assertions of the fundamental difference of the subjects of international and municipal law. The chapter on the jurisdiction of Prize Courts is instructive. That on enemy character is written with admirable clearness. The chapter on restrictions of the right of capture might perhaps have been

made shorter in view of the fact that the Sixth Hague Convention has been denounced by this country. The chapters which follow deal with contraband of war, unneutral service, trading with the enemy, the rights and duties of captors and the procedure of Prize Courts. An interesting dissertation on the international Prize Court concludes the book.

It should perhaps be pointed out that the title "A Treatise of the Law of Prize" seems to be somewhat too ambitious inasmuch as for a searching discussion of the essentials of the law of prize and of such questions as were in the centre of controversy during the last war, the student will have to turn to general treatises on international law—to "Hall," "Oppenheim," and "Hyde." It is true that the author is not concerned with theory but only with law as embodied in actual decisions. But the function of the international lawyer with regard to prize law is not exhausted in registering and comparing decisions. Out of the conflicting practice before and during the World War, out of the retaliatory jurisdiction of Prize Courts and of the new conditions of modern warfare, the jurist must try to lay the foundations of a future international law of prize. This is no doubt a difficult task, considering that of the different parts of the feeble structure of international law, prize law is perhaps the feeblest and most controverted. The author, however, seems to assume, in the chapter dealing with the international prize court, that, apart, possibly, from the question of determining enemy or neutral character, there are no noteworthy points of divergence in the practice of Prize Courts. It is submitted that there is no sufficient reason for such optimism. The retaliatory orders which no doubt introduced a certain measure of uniformity are now a matter of history; so is the Declaration of London. We are thus, once more, thrown back upon the state of law existing before the Declaration of London. Here disagreement both in writings and in practice is the rule. The law of contraband and blockade may be taken as an instructive illustration: the questions as to the necessity and the extent of notification of blockade, as to what constitutes a breach of blockade, as to when a blockade-running ship is *in delicto*, as to the penalty for breach of blockade, as to the determination of absolute and conditional contraband, as to continuous voyage and continuous transportation (why does the author ignore this term?), as to when the carrier of contraband is *in delicto*, as to the penalty for carriage of contraband—they all are differently answered both in theory and by Prize Courts. Not much is gained by minimising the importance of these divergencies. Prize law—as a part of international law—cannot yet be regarded as a well-established branch of that law and treated exclusively on the basis of decisions. It is to be regretted, therefore, that references to the literature on the subject are rare and certainly insufficient. Verzijl's recent Digest is not even mentioned. It is not necessary to add that these remarks are in no way meant to detract from the value and the scholarly character of Dr. Colombos's work. They are offered simply as suggestions which might be borne in mind.

Professor Higgins' Introduction, although certainly not in the nature of an *apologia*, contains a dignified statement, by the greatest living British authority on Prize Law, of the impartial character of the law administered by British Prize Courts during the World War.

Der Schutz des Begunstigten in der Treuhand nach englisch-amerikanischem Rechte. By HEINRICH DAVID. 1926, XIV, pp. 111, Zürich.

This is a competent statement, by a Swiss lawyer, of the part of the law of trusts relating to the protection of the interests of the *cestui que trust*. Prepared in England and based both on statutory and case law, the monograph should be welcomed by foreign readers.

The Criminal Law: A Sketch of its Principles and Practice. HENRY W. DISNEY, B.A. (Oxon.). 2nd Edition. ALBERT LIECK. 1926. Large Crown 8vo. pp. xxxii and 284 (with Index). Stevens & Sons, Ltd. 10s. net.

We are told that it was the desire of the late author to supply the wants of students intending to practise in our criminal courts, and of magistrates desiring "a bird's-eye view of the subject." We are therefore told a great deal of piracy, spying, embracery, breach of prison and breach of pound, coinage crimes and crimes affecting our revenue, post office, transport and health. So now we know that "to inoculate a person with variolus matter, or in any other way to produce small-pox, is unlawful"; and that "there is a speed limit, which is never observed, the speed and power of control of motor vehicles having increased out of all relation to the law." We are fascinated and we forget that we are reading a work of 284 pages, wherein the C.C.A. and the writ of *Habeas Corpus* receive six lines apiece. What *does* it profit us to know so much about pedlars and hawkers, pawnbrokers and publicans, and so little about larceny and false pretences? And how unfortunate is the word "possession" in line 2 of page 195.

Lack of space is no excuse for such omissions as *Sorrell* v. *Smith* (p. 139), *R.* v. *Wheat & Stocks* (p. 139), *R.* v. *Creamer* (p. 180), *Folkes* v. *King* (p. 181)—and even *R.* v. *Denyer*, 1926, 2 K.B. 258 (p. 155). Nor should it be an excuse for such ambiguities as these: "Assizes are held periodically in each county on the circuit consecutively by the same judge or judges" (p. 65). "A justice for the peace acts by virtue of a commission of the Crown; but some derive their authority from statute and some from charter" (p. 34). "Whether a statement on which a charge of perjury is founded was material is in all cases a question of law *for the judge at the trial, not for the justices before whom the accused is charged*" (p. 127).

We cannot agree that the effect of *R.* v. *Osborne* is correctly stated on p. 86; nor that 12 & 13 Geo. V, c. 56, s. 2, has produced the change stated on p. 176. And we find two assertions which cannot remain unchallenged: "The *best* evidence means *primary* evidence, i.e., *direct* evidence . . . thus what A saw or heard should be stated by A" (p. 88). And again: "It is immaterial whether the first marriage is contracted in England or elsewhere, provided . . . the marriage was *valid* in accordance with the laws of the country in which it was celebrated" (p. 139).

This criticism has been provoked by the certainty of another edition—so great is the vitality shown in some portions of this book. But two *grammatical* errors cannot remain, viz., the footnote to p. 115 and the last sentence on p. 161; they are not meant to be amusing.

The Criminal Justice Act, 1925 (*annotated*), *together with Rules, Orders and Forms.* By E. J. HAYWARD, clerk to the Justices for the City of Cardiff. Published by Butterworth & Co. Price 17s. 6d.

A book by this experienced editor is a welcome, if late and rather high priced, addition to the books already in the market upon the Criminal Justice Act, 1925. It has not been possible for Mr. Hayward to say much that is new upon the sections themselves; the really valuable feature of his book being the addition of the various sets of rules which have been issued under the Act, the desire for their inclusion accounting, no doubt, for the delay in publication.

We have to quarrel with him a little for slurring over difficulties. That in s. 13 as to the taking, or accepting if tendered, of a plea of guilty is not discussed, the editor contenting himself with quoting words from the Bill which were deleted in Committee; as the Parliamentary history of an enactment is not admissible to explain its meaning, the quotation is not helpful and may even promote a mistaken reading. We should have been glad, too, to see some exposition of the

difficulties as to consecutive sentences, which arise in practice under s. 27, taken in conjunction with s. 18 of the Criminal Justice Administration Act, 1914.

Another difficult point which deserved notice arises on the guarded wording of the schedule of indictable offences triable summarily, as to incitement to commit a summary offence. It is not to be assumed, without discussion, that incitement to commit any summary offence is an indictable misdemeanour.

It would be ungracious to pick too many holes in a piece of useful and careful work. One accidental omission however must be noticed on p. 66. In the list of offences which courts of quarter sessions cannot try is "capital felony, or any felony which, when committed by any person not previously convicted of felony, is punishable by penal servitude for life." The exceptions to this exception, made by the Criminal Justice Act, 1925, itself, are not indicated.

The Handybook of Solicitors' Costs. A. C. DAYES, Costs Accountant. Fifth Edition by Members of The Solicitors' Managing Clerks' Association. 1926. Large Crown 8vo, pp. xxvii and 178. Sweet & Maxwell, Ltd., Chancery-lane. 15s. net.

Former editions of this book have been found very useful, especially for quick reference to the conveyancing scale without calculation, but we are frankly disappointed that this new edition has omitted from the calculated figures the new Scales and Orders. For the purposes of the average practitioner the tables on pp. 165 to 171 would be far more useful had they been brought up to date with the 33⅓d. % added. Again, the table for rack rent leases on p. 172 appears to be inadequately treated. For all rents above £100 we think practitioners would like to be able to see at a glance the scale charges against lessor and lessee separately, and also the charges applicable when the same solicitor is acting for both lessor and lessee, instead of the whole matter being disposed of in a footnote. The important point which the Editors appear to have overlooked is that, whilst practitioners have all the necessary information on the subject, the real usefulness of such a handbook would be to show the figures at a glance without the trouble of having to make calculations. In other respects the book retains all its useful features.

W. P. H.

Books Received.

The Judges in Ireland, 1221–1921. F. ERLINGTON BALL, Hon. Litt.D. Dublin. 1926. Demy 8vo. In 2 Vols. Vol. 1 pp. xxii and 365. Vol. II 408 pp. (with Index). John Murray, Albemarle-street, W. 32s. net.

Gascony under English Rule. ELEANOR C. LODGE, M.A., F.R.Hist. Socy. (Principal of Westfield College, University of London). 1926. With Four Maps. Demy 8vo. pp. vii and 261. With Index. Methuen & Co., Ltd., London, 10s. 6d. net.

An American Tragedy. THEODORE DREISER. 1926. Large Crown 8vo. Two volumes in one. Vol. I 149 pp. and Vol. II 409 pp. Constable & Co., Ltd., 11/12, Orange-street, London. 10s. net.

The Central Law Journal. Vol. 99. No. 21, 5th November, 1926. Central Law Journal Company, St. Louis, Mo. 25 cents.

The Political Principles of some Notable Prime Ministers of the Nineteenth Century. A series of Lectures delivered in King's College, University of London. F. J. C. HEARNSHAW, M.A., LL.D. (Fellow of King's College and Professor of History). 1926. (Illustrated.) Demy 8vo. pp. viii and 300. Macmillan & Co. Ltd., St. Martin's-street, London. 12s. 6d. net.

Debits and Credits. RUDYARD KIPLING. 1926. Crown 8vo. 416 pp. Macmillan & Co., Ltd., St. Martin's-street, London. 7s. 6d. net.

Leaves from a Viceroy's Note-Book and other Papers. By the MARQUESS CURZON OF KEDLESTON, K.G. (Viceroy and Governor-General of India, 1899–1904 and 1904–1908). Demy 8vo. pp. x and 414. Macmillan & Co., Ltd., St. Martin's Street, London. 28s. net.

The Rebel Earl and other Studies. WILLIAM ROUGHEAD. (With Ten Illustrations.) 1926. Medium 8vo., pp. xii and 310. William Green & Son, Ltd., Edinburgh, 10s. 6d. net.

The English and Empire Digest. With Annotations. A complete Digest of English Cases Reported from Early Times. With certain Scotch, Irish and Indian and Dominion Cases. (Annotated.) Vol. XXX, "Intoxicating Liquors" to "Landlord and Tenant." (Parts I to VI). Crown quarto. pp. lxxxviii and 522. Butterworth & Co., Bell-yard.

The Love Letters of William Pitt, First Lord Chatham. ETHEL ASHTON EDWARDS. Demy 8vo. pp. 164. 1926. Chapman and Hall, Ltd., London. 15s. net.

August, 1926. *Massachusetts Law Quarterly.* Vol. XI., No. 5: with Supplement containing majority and minority reports on Old Age Pensions of the Commission on Pensions. Massachusetts Bar Association, 60 State-street, Boston, Mass.

Journal of The Institute of Arbitrators. October, 1926. The Institute of Arbitrators (Incorporated), 28 Bedford-square, W.C.1. 1s. net.

The Irish Law Times and Solicitors' Journal. 13th November, 1926. John Falconer, 53 Upper Sackville-street, Dublin. 1s. net.

Probate and Estate Duty Practice. EDGAR A. PHILLIPS, LL.B. (Clerk of the Principal Probate Registry). Demy 8vo, 296 pp. (with index). The Solicitors' Law Stationery Society Limited, 104 Fetter-lane, E.C.4, Liverpool and Glasgow.

The Law of Housing and Town Planning in Scotland, 1919-1925. 2nd Edition. W. E. WHYTE, O.B.E., Solicitor, Clerk to the District Committee of the Middle Ward of Lanarkshire, and W. BOYD BERRY, M.A., LL.B., Advocate. Medium 8vo, pp. xxv and 387 (with index). William Hodge & Co., Limited, Edinburgh and Glasgow. 30s. net.

Mews' Digest of English Case Law, containing the reported decisions of the superior Courts and a selection of those from the Scottish and Irish Courts to the end of 1924. 2nd Edition. Under the general editorship of Sir ALEXANDER WOOD-RENTON, K.C.M.G., K.C., late Chief Justice of Ceylon, SYDNEY EDWARD WILLIAMS and WYNDHAM A. BEWES, both of Lincoln's Inn, Barristers-at-Law. Vol. XVIII. Shipping and Marine Insurance. Medium 8vo, ix pp., and 2040 cols.: Sweet & Maxwell Limited and Stevens and Sons Limited; The Solicitors' Law Stationery Society Limited, 104 Fetter-lane, E.C.4, Liverpool and Glasgow. Per volume 35s. net.

The Whispering Gallery. Being leaves from the Diary of a Diplomat. 1926. Demy 8vo. pp. x and 258 (with index). John Lane, The Bodley Head Limited, London. 10s. 6d. net.

A Winter In Paradise. ALAN PARSONS. Illustrated with photographs taken by the Author. 1926. Crown 8vo. pp. viii and 227. A. M. Philpot Ltd., 69 Great Russell Street, W.C.1. 7s. 6d. net.

W. P. H.

The Surrey Sessions Bench and Bar will hold their annual dinner on Tuesday, the 30th inst., at the Grand Hotel Charing-cross, at 7 p.m. punctually. Members who wish to attend are requested to communicate with Mr. J. F. Vesey Fitzgerald, 1, Tanfield-court, Temple, E.C.

Correspondence.

Settled Land—Estate *pur Auter Vie*—Trustees.

Sir,—Is there not a slight error in paragraph (2) of your answer to Question 513 (THE SOLICITORS' JOURNAL, 6th inst., p. 1084). Estate L devolves, on the death or re-marriage of the original testator's wife, in son A, if then living, and if A be then dead in A's wife.

Estate N on the death or re-marriage of the original testator's wife is held by the trustees of the will of the original testator upon trust to sell.

It seems to me therefore that the new paragraph 4 added to Pt. IV, Sch. I, of the Law of Property Act, 1925, by the Schedule to the Law of Property (Amendment) Act, 1926, can have no application either to estate L or estate N. As pointed out in your answer this new paragraph does not apply to estate M.

A. C. B. W.

Lincoln's Inn, W.C.2.
8th November.

[The above criticism appears to be based on the footing that, since the properties L, M and N do not "devolve together," they are excluded from the new paragraph 4. It is thus assumed that they are under the "same settlement" within the paragraph, whereas it is submitted with confidence that the will creates three separate settlements, in which case the answer stands as given. Our correspondent is nevertheless thanked for his letter, and the fact that he has so carefully followed a long and difficult question, presumably in the faith that he will find an answer worth considering, is duly appreciated.—ED., *Sol. J.*]

In re Annesley: Davidson *v.* Annesley and the Doctrine of the *Renvoi*.

Sir,—We must apologise for again taking up your valuable space on this subject.

By a recent judgment of the Tribunal Civil de Boulogne, dated 5th February, 1926, which has just come to our notice, an English petitioner, who had taken divorce proceedings against her husband domiciled *de facto* in France, failed to obtain any relief as the grounds for divorce were not such as would have enabled the petitioner to obtain a decree in the English courts, although ample to have obtained a decree under French territorial law.

The court held that "it is not for the court to decide whether in accordance with English law or jurisprudence the causes of divorce are determined by the law of domicil, but to apply the principles of private international law which are contained in Article 3 of the Civil Code, which, in edicting that the laws concerning the status of persons govern French nationals even though resident abroad, implicitly makes the status and capacity of foreigners resident in France depend on their national law; that this rule is imperative and binds the judges each State having the right to fix the extent of the application of its own laws and also of foreign laws in its territory."

This judgment is not in any way remarkable in its very definite negation of the doctrine of the *renvoi*, thereby following not only the almost unanimous opinion of the French authorities on the subject, but also a considerable volume of earlier jurisprudence. There was, however, a somewhat remarkable *obiter dictum* contained in this judgment to the effect that the "English rule of the law of domicil is not written in any English law but derived only from a tendency of English jurisprudence." We thus get the disquieting effect that within a few months the English court has upheld the doctrine of the *renvoi*, basing its decision in part upon such evidence as was tendered before it of French law and jurisprudence, whereas a French court has rejected this doctrine, basing it in part upon such evidence of English law and jurisprudence as was tendered before it.

The practical result of these two cases is that the unsuccessful petitioner who was unable to obtain relief from the French court on the grounds that in spite of the English jurisprudence upon the subject English territorial law must be applied, would none the less be held by the English court to be unable to dispose of his separate property freely by testament, and that her husband would be entitled to a share of such property in the event of her death by application of French territorial law by the English courts.

The result is not only unjust and consequently deplorable, but owing to the present state of uncertainty as to the state of the law in the two countries, it has become more or less a matter of chance whether French or English territorial law will be administered in such cases, and the uncertainty is extremely unsatisfactory to all British nationals domiciled in France.

If anything is to be done in the matter the move must come from England, as it is British and not French subjects who are adversely affected by the present state of uncertainty.

We suggest that in view of the conflict of the various decisions affecting the question of the doctrine of the *renvoi*, it is essential that a convention should be entered into between the two countries without delay for the purpose of finally agreeing on the application of the territorial law of one or other of the countries in all matters affecting the status of British nationals domiciled *de facto* in France.

E. G. BARCLAY & CO.

Paris,
15th November.

In re Annesley.

Sir,—I do not understand how either the French or Belgian law of domicil can be material to the question of *renvoi*. Our theory of domicil is unknown to the Continent; the word "domicile" is not very distinct from residence. The *renvoi* theory is, at least, clear, and the only alternative would be to adopt the Continental test of nationality.

E. S. P. HAYNES.

Lincoln's Inn,
23rd October.

Obituary.

MR. F. G. McKEEVER, LL.B.

Mr. Francis G. McKeever, LL.B., solicitor, died at his residence, Bettystown House, Laytown, on Wednesday, the 10th inst. The third son of Mr. Francis McKeever, of Clooney House, Co. Meath, he had a distinguished career at Trinity College, taking honours and a gold medal in logic and ethics. He was admitted in 1898, and for many years carried on a large and lucrative practice in Drogheda and the neighbouring district. He leaves a widow, one son, and two daughters, one of whom is the wife of Mr. Kenneth Dockrell, K.C. The son, Mr. Thomas S. McKeever, solicitor, will carry on the practice.

MR. G. C. DOWNING.

Mr. George Cottrill Downing, solicitor, senior partner in the well-known firm of Downing & Handcock, of Cardiff and London, passed away at his residence, Beverley, Llanishen, Glamorgan, on Tuesday, the 2nd inst., in his seventy-seventh year. Mr. Downing was one of the oldest practising solicitors in Cardiff, and will probably be best remembered for his valuable work on behalf of the Barry Docks and Railway Company, the success of which up to the time it was absorbed by the Great Western Railway Company was a remarkable tribute to his business as well as to his legal acumen. He was the first secretary to the company, and also its legal adviser,

and in the dual capacity his responsibilities were exceptionally heavy. He conducted on behalf of the company an enormous amount of legal and Parliamentary work, and was responsible for the promotion and defence of all its Bills in Parliament, in which sphere he met with a remarkable measure of success. A native of Falmouth, he served his articles with Mr. T. H. Tilly, solicitor, of that town, was admitted in 1872, and shortly afterwards went to London for the purpose of gaining further experience, during which time he was associated with the firm of Messrs. Gregory, Rowcliffe & Co. Proceeding to Cardiff later he worked hard and built up a good practice, and in 1882 was joined by the late Colonel John Just Handcock, and this partnership laid the foundation of what afterwards became the well-known firm of Downing & Handcock, which has since carried on an extensive business, particularly in Admiralty and Commercial Court practice, both in London and in the Principality. He was of a genial and kindly disposition, and had endeared himself to a very large circle of friends in Cardiff and district. As a Cornishman he took an active interest in the welfare of all hailing from his native county who resided in the City of Cardiff, and was a past president of the Cardiff Cornish Society. In his younger days an ardent Volunteer, Mr. Downing was associated with the late Glamorgan Rifle Volunteer movement, and was a good shot, winning many prizes. He was an enthusiastic yachtsman, and whilst he made yachting one of his favourite recreations, he was also a keen competitor. He was predeceased by his wife about nine months ago, and lost his youngest son, Lieut. Barry Downing, in the Great War. He is, however, survived by two sons, Mr. Vincent Downing and Mr. H. Corbett Downing, solicitors, both of whom are partners in the firm, and will continue to carry on the practice.

Mr. CHARLES KENSHOLE.

Mr. Charles Kenshole, solicitor, senior partner in the firm of Messrs. C. & W. Kenshole & Prosser, Aberdare (South Wales), died at a nursing home, in Cheltenham, on Saturday, the 30th ult., at the age of seventy-three. The eldest son of the late Mr. Emmanuel Kenshole (for many years High Bailiff of the Aberdare County Court), he was born at "Trecynon," Aberdare, in July, 1853, and received his early education at the local board school ("Ysgol Comin,") well known in the Principality for the many prominent Welshmen who received their earlier education there. At the age of thirteen he entered the office of Mr. Henry Piper Linton, a capable Yorkshire lawyer, then in practice at Aberdare, and, becoming an expert stenographer, he was soon filling the important position of confidential clerk to Mr. Linton, to whom he was subsequently articled. On being admitted, in 1879, he was at once taken into partnership, the firm being designated "Linton and Kenshole," subsequently changed to Linton & C. and W. Kenshole, when Mr. William Kenshole was admitted, with offices at Cardiff and Aberdare. In 1900 this partnership was dissolved, Mr. Linton retaining the Cardiff business, the Aberdare branch being taken over entirely by Mr. Charles Kenshole and Mr. William Kenshole. The present title of the firm—C. & W. Kenshole & Prosser—was assumed when Mr. A. J. Prosser, who was admitted in 1907, became a partner in 1915. In 1904, on the decease of Mr. Vaizie Simons, of Merthyr, Mr. Charles Kenshole succeeded him as legal adviser to the Monmouthshire and South Wales Coal Owners' Association, whilst in 1907 he was appointed solicitor to the Monmouthshire and South Wales Employers Mutual Indemnity Society. He was continually engaged in litigation affecting the coal-mining industry, the famous "Stop-day" action being, perhaps, one of the most difficult and important cases conducted by him. This he successfully took to the House of Lords, when Sir Edward Clarke, K.C., was briefed for the plaintiffs (the Coal Owners' Association), and Lord Reading (then Mr. Rufus Isaacs), instructed by the late Sir Walter Nicholas, in his capacity of solicitor to the South Wales Miners' Federation, represented the defendants. Mr. Kenshole was undoubtedly a most capable lawyer and keen advocate, and won a high reputation for the very able way in which he conducted his cases in the various courts. From the time Mr. Prosser joined the firm, Mr. Kenshole, however, gradually relaxed his activities as an advocate (Mr. Prosser taking over this side of the practice), which enabled him to assume the responsible position of Registrar of Merthyr County Court, which appointment he only resigned in March last upon the amalgamation of the Merthyr and Aberdare County Courts, when his brother Mr. William Kenshole was appointed to the joint Registrarship. His other important public appointments included that of High Constable for the Division of Miskin Manor (1915 to 1919), Chairman of the Aberdare Local Military Tribunal, Chairman of the Red Cross Hospital, and of the Aberdare General Hospital, and Vice-President of the Y.M.C.A. for Wales. Three years ago he presented the remaining four acres of land, constituting the Abernant Park, to the Aberdare General Hospital (having previously presented 12½ acres), thereby ensuring that the entire grounds became hospital property. His last public benefaction was a sum of £2,000 to the Aberdare County School for the purpose of establishing a scholarship to enable boys in poor circumstances to proceed to college. Mr. Kenshole was twice married, and is survived by his second wife and his son, Mr. Ivor Kenshole, who is now a partner in the firm. W. P. H.

Court of Appeal.

Ideal Films Limited *v.* Richards and Others.

25th October.

Practice—Representative Action—Action against an Unregistered Association — Property vested in Trustees—Joinder of Trustees as Defendants—Enforcement of Liability—Rules of the Supreme Court, Ord. XXV, r. 4.

In order to enforce a liability incurred by an unregistered association of individuals, the trustees of the association, in whom the property and assets of the association are vested, can be joined as defendants in an action against the managing committee of the association.

Appeal from an order of Horridge, J., at chambers, striking out the names of six defendants from the statement of claim in an action in which those defendants were sued as trustees of an unregistered association. The plaintiffs claimed to recover from the defendants the sum of £234 7s. 8d. alleged to be due to the plaintiffs on a contract from the members of the said association. By their statement of claim the plaintiffs alleged as follows: "(1) The Llanbradach Workmen's Hall and Institute is an unregistered association of miners and other workmen employed at Llanbradach, South Wales. The first eleven defendants are and were at all material times members of the said association, and also are and were the members of a committee appointed by the general body of members to conduct the affairs of the association on the members' behalf. The remaining defendants are and were at all material times the trustees of the said association, and the funds of the association and certain leasehold premises situate at Llanbradach the property of the association are and were vested in them as such trustees. (2) The said association has for some years carried on upon the said premises a cinematograph theatre for the benefit of the members, and has hired films for the purpose of exhibition at the said theatre. (3) By various contracts in writing made between the plaintiffs and the said committee acting for and on behalf of the members of the said association, the plaintiffs agreed to supply the films therein mentioned for exhibition at the said theatre upon the terms and at the prices specified in the said contracts. The plaintiffs duly supplied the said films, and the sum of £234 7s. 8d. is due and owing to the plaintiffs in respect of

the films. The plaintiffs claim—(1) £234 7s. 8d. (2) An order directing the said trustees to pay the said sum to the plaintiffs out of the property and assets of the said association in the hands of the said trustees. (3) An order charging the said property and assets with payment of the said sum to the plaintiffs." The plaintiffs obtained a representation order directing that the first eleven defendants should defend the action on behalf of the members of the association. Horridge, J., made an order under Ord. XXV, r. 4, R.S.C., directing that the last six defendants should be dismissed from the action as the statement of claim, so far as it concerned them, disclosed no cause of action. The plaintiffs appealed.

On the appeal coming on for hearing on 13th October, the Court of Appeal, being of opinion that the statement of claim as then drawn was wrong in form, the matter was adjourned to give the plaintiffs an opportunity of amending their statement of claim under Ord. XXVIII, r. 2. The statement of claim was accordingly amended by the insertion in clause 1 of words to the effect that the first eleven defendants were "sued as representing the general body of the members," and by the addition of the following words at the end of the same clause: "The said funds and premises are and were at all material times the common property of the members of the association and vested in the trustees upon trust for the members." The claiming clause as amended read as follows: "The plaintiffs claim—(1) A declaration that the sum of £234 7s. 8d. is due and owing to the plaintiffs from the members of the association; (2) an order directing the trustees to pay the said sum, together with the costs of this action, to the plaintiffs out of the property and assets of the association in the hands of the trustees; and (3) an order charging the said property and assets with payment of the said sum and costs to the plaintiffs."

BANKES, L.J., in the course of his judgment, said that the statement of claim, as originally framed, was wrong in form, and the learned judge (Horridge, J.) was quite justified in taking the course which he took. On the amended statement of claim an important question was raised: It was impossible to say that, as amended, the statement of claim should be struck out as being frivolous and vexatious in its reference to the persons named as trustees of an unregistered association. Having regard to *Walker* v. *Sur*, 1914, 2 K.B. 930, the amended statement of claim had been correctly drawn for the purposes of a claim against representative members of an unincorporated society. Decisions dealing with trade unions afforded no real guidance to a correct appreciation of the form in which the claim in this case had been framed. In the case of trade unions, the rights and obligations were statutory, and the question in those cases had always been whether the action was maintainable having regard to the relevant statutory provisions. The present claim was free from any such statutory provisions and the only question was whether the plaintiffs here had a right to that particular form of claim against trustees, and whether any inconvenience was caused by their having it. The respondents contended that the proper course to adopt was to obtain a declaratory judgment and then to apply for the specific remedy. But there was direct authority, namely, that of Lord Lindley in *Taff Vale Railway* v. *Amalgamated Society of Railway Servants*, 1901, A.C. 426, at p. 443, that the plaintiffs were entitled to do what they had done in this case. The claim in its amended form appeared to be a convenient form of enforcing an alleged liability against an unregistered association of individuals who had incurred liabilities and in respect of which there might be difficulty in recovering judgment. The appeal must be allowed.

SCRUTTON, L.J., delivered judgment to the same effect. Appeal allowed.

COUNSEL: *W. E. P. Done*, for the plaintiffs; *A. W. Cockburn*, for the defendants.

SOLICITORS: *Hugh V. Harraway; Martin & Martyn.*

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Bird: Watson *v.* Nunes and Others.

Clauson, J. 20th October.

WILL—CONSTRUCTION—APPOINTMENT OF TRUSTEES—TO BE TRUSTEES FOR THE PURPOSES OF THE SETTLED LAND ACTS, 1882-1890—ANNUITIES—RESIDUARY ESTATE IN TRUST TO A FOR LIFE AND AFTER HIS DEATH IN TRUST FOR HIS SONS WHO SHOULD ATTAIN TWENTY-ONE—DIRECTION TO SET ASIDE SUFFICIENT RESIDUE TO PROVIDE FOR ANNUITIES—DEATH OF A, LEAVING THREE SONS, ONE OF WHOM HAD ATTAINED TWENTY-ONE—PART OF RESIDUARY ESTATE APPROPRIATED TO PROVIDE FOR ANNUITIES—WHETHER REAL ESTATE APPROPRIATED OR UNAPPROPRIATED IS SETTLED LAND FOR THE PURPOSES OF THE SETTLED LAND ACT, 1925—TRUSTEES OF WILL EXERCISING POWERS OF A TENANT FOR LIFE—SETTLED LAND ACT, 1925, 15 Geo. 5, c. 18, s. 1, s-s. 1 (iii) (v); s. 19 s-s. 1; s. 20 s-s. 1 (ii); s. 23 s-s. 1 (*a*) (*b*); s. 117 s-s. 1 (ix).

Land which is the subject matter of a settlement of such a character that it remains a settlement within s. 1, *s-s.* 1, *of the Settled Land Act*, 1925, *can remain settled land, although ultimately such estate may come into being which is an estate in an undivided share only. A will made in* 1902, *appointing trustees for the purposes of the Settled Land Acts*, 1882 *to* 1890, *and creating annuities and devising and bequeathing residuary estate in trust for A for life, and afterwards for such of his sons who shall attain twenty-one years, and directing sufficient residuary estate to be set aside to provide for the annuities to the exoneration of the rest, operates as a settlement under the Settled Land Act*, 1925, *and the trustees thereof can exercise the powers of a tenant for life under the said settlement created by the will.*

Originating summons. This was a summons taken out by the trustees of the will of the testator, asking whether they, as trustees of his will, were trustees for sale of (*a*) the unrealised residuary real estate of the testator; and (*b*) the real estate of the testator which had been appropriated to meet the annuities given by his will; and if they were not such trustees for sale, to have it determined whether the residuary and appropriated real estate was settled land, and, if so, who was tenant for life or had the powers of a tenant for life under the settlement made by the will? A further question was raised as to who was entitled to the income of the residuary estate accruing between the date when R. A. Nunes attained the age of twenty-one years and the date when H. O. Nunes and E. C. Nunes should attain twenty-one or die under that age. With regard to this last question the judge held that R. A. Nunes was now absolutely entitled to one-third of such income and that the other two-thirds must follow the destination of the share or shares of the corpus of the residuary estate from which the income had arisen or should arise. The facts of the case were as follows: The testator made his will on 17th July, 1902, and thereby appointed trustees and declared that they should be trustees of the will for the purpose of the Settled Land Acts, 1882 to 1890. After making various pecuniary and specific bequests, and providing for payment of his debts and funeral and testamentary expenses, he bequeathed a number of annuities and devised and bequeathed all the residue of his property both real and personal to the use of his trustees upon trust after payment thereout of all outgoings to pay the net annual income thereof to A. B. Nunes for his life, and after his death, then as to capital and income of such residuary estate in trust for all the children of A. B. Nunes who, being sons, should attain the age of twenty-one years. The testator also directed his trustees to set aside and appropriate sufficient of the property to meet the annuities bequeathed by his will, and he declared that such annuities should be a charge on the properties so appropriated, but should not constitute

a charge on the remainder of his estate, and he further declared that it should be lawful for his trustees to exercise over or in relation to all or any hereditaments of whatever tenure for the time being held upon the trusts of his will, all such powers of leasing and sale and other powers of every description which might be applicable thereto as were by the Settled Land Acts, 1882 to 1890, conferred upon trusts for life. The testator died in October, 1902. On 4th April, 1903, the trustees by deed of that date appropriated certain freehold ground rents to meet the annuities given by the will. A. B. Nunes died on 5th January, 1918, leaving three sons, the defendant R. A. Nunes, who had attained the age of twenty-one years, and the defendants H. O. Nunes and E. C. Nunes, who had not yet attained that age. The trustees of the will contracted to sell part of the testator's residuary real estate, and also part of the real estate appropriated to meet the annuities bequeathed by the will, and the purchasers raised questions in each case as to whether the plaintiffs were trustees for sale of such residuary real estate and appropriated realty.

CLAUSON, J., after stating the facts, said: I will not decide whether the plaintiffs are trustees for sale of the unrealised residuary estate and the real estate which has been appropriated to meet the annuities. There remains the question whether the residuary and appropriated real estate is settled land, and who have the powers of a tenant for life under the settlement made by the will. The interests of the three defendants are interests in undivided shares, and according to the definition of land in s. 117 (1) (ix) of the Settled Land Act, 1925, "land" includes land of any tenure and "any estate or interest in land not being an undivided share in land." Therefore an undivided share in land cannot be settled land, and that particular share can not be settled land for the purposes of the Act. But land which is the subject-matter of a settlement of such a character that it remains a settlement within s. 1 (1) of the Act can remain settled land although ultimately some estate may come into being which is an estate in an undivided share only. There is nothing therefore to prevent this land as a whole being the subject-matter of a settlement under the Act. With regard to the land subject to the annuities that land comes within the term "any . . . annual or periodical sums for the . . . benefit of any persons" in s. 1 (1) (v) of the Act. With regard to the land not appropriated to meet the annuities that land comes within s. 1 (1) (iii) of the Act because the defendant who has attained twenty-one years is a person of whom it is true to say that under the will land is limited in trust for him for an estate in fee simple contingent on the happening of various events. The will therefore operates as a settlement under the Act. It remains to be ascertained who have the powers of the tenant for life. It is plain that the appointment of the trustees of the will as trustees for the purposes of the Settled Land Acts, 1882 to 1890, makes them under s. 23 (1) (*a*) and (*b*) of the Act of 1925 trustees for the purposes of the settlement under that Act. If nobody else is found who is either a tenant for life or has the powers of a tenant for life then the trustees can exercise the powers of a tenant for life. Here the annuitants cannot be said to be in possession of the settled land within the meaning of s. 19 (1), and the defendant who has attained twenty-one does not come within s. 20 (1) (ii) in view of the fact that an "undivided share in land" is excluded from the definition of land in s. 117 (1) (ix). The trustees of the will are, therefore, the persons who can exercise the powers of a tenant for life.

COUNSEL: *L. W. Byrne; J. G. Kelly; W. H. Aggs.*
SOLICITORS: *Watson, Sons & Room.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Sir Robert Carr Selfe, of Cedarlea, Parklands, Surbiton, late Secretary and Financial Adviser of the Ecclesiastical Commissioners, who died on 28th September, aged eighty-five, left estate of the gross value of £16,810, with net personalty £15,291.

High Court—King's Bench Division

Gale *v.* Motor Union Insurance Company, Limited. Loyst *v.* General Accident Fire and Life Assurance Corporation, Limited.

Roche, J. 2nd November.

INSURANCE—THIRD PARTY RISKS—RATEABLE CONTRIBUTIONS WHEN TWO POLICIES—BASIS OF PAYMENTS.

Where claims were made under two insurance policies, in one case by the person involved in the accident, and in the other by a person as trustee for the first person, and each of those policies contained a provision that there was no liability where the risk was covered by another policy, and also provided that in the event of the existence of two policies then they should contribute rateably, these two provisions were to be read together as showing that rateable contributions were intended, and the correct basis of the contributions was that each should pay one-half of the amount claimed.

The question of the liability of insurance companies was raised by this special case stated by an arbitrator under s. 7 of the Arbitration Act. Gale, as trustee for Loyst, and Loyst on his own behalf claimed, under policies dated 30th September, 1924, and 3rd November, 1924, issued to them by the Motor Union Insurance Company and the General Accident Assurance Corporation respectively, an indemnity in respect of pecuniary compensation which Loyst had been compelled to pay under circumstances to be hereinafter mentioned. The arbitration of the claims came before Mr. Craig Henderson, K.C., who stated his award in the form of a special case. The claimant Gale was insured by the Motor Union Insurance Company from 14th August, 1924, to the 13th August, 1925, in respect of his A.B.C. two-seater motor-car; the policy contained, among others, the following provisions: "Section A. The company shall indemnify the insured or (subject to provisions of condition 6) any relation or friend driving with the insured's consent against the payment of all sums which they shall become legally liable to pay for compensation in respect of accidents caused by any motor vehicle belonging to the insured and described in the above schedule: (*a*) To any third person . . .; (*b*) to any property or animal belonging to a third person: Provided always that the due observance and fulfilment of the conditions and qualifications indorsed on this policy shall be a condition precedent to any liability of the company under this policy . . . Condition 6: The extension of the indemnity to friends or relatives of the insured is conditional upon such friend or relative being a licensed and competent driver, and not being insured under any other policy. Condition 10: If at the happening of any accident, injury, damage, or loss covered by this policy . . . there shall be subsisting any other insurance or indemnity of any nature whatever covering the same, whether effected by the insured or any other person . . . then the company shall not be liable to pay or contribute towards any such damage or loss more than a rateable proportion of any sum payable in respect thereof for compensation." The General Accident Assurance Corporation insured Loyst in respect of his two-seater motor-car from 31st October, 1924, to 31st October, 1925, the policy containing, *inter alia*, the following: ". . . the corporation will, subject to the terms conditions and limitations contained herein and of any indorsement hereon, indemnify the insured . . . in respect of any car described in the schedule against . . . Sec. 2 (1) all sums which the insured shall become legally liable to pay in respect of any claim by any person . . . for . . . accidental bodily injury or damage to property . . . caused by through or in connexion with such car . . . (2) The insured will also be indemnified hereunder while personally driving a car not belonging to him provided . . . that there is no other insurance in respect of such other car whereby the insured may be indemnified." The conditions endorsed included,

"If at the time of the occurrence of any accident loss or damage there shall be any other indemnity or insurance subsisting whether effected by the insured or by any other person the corporation shall not be liable to pay or contribute more than a rateable proportion of any sums payable in respect of such accident loss or damage." After the conditions came: "The due observance and fulfilment of the provisions and conditions of this policy . . . shall be a condition precedent to any liability of the corporation to make any payment under this policy." The claimants were brothers-in-law. While, with Gale's consent, driving Gale's A.B.C. motor-car, Loyst collided with a motor-cyclist, and in an action for damages in Brentford County Court on the 9th October, 1925, was ordered to pay £93 17s. 4d. damages, and costs, which were subsequently ascertained at £60 2s. 11d. Loyst personally paid these sums and also incurred costs in the action which he had not yet paid. Loyst's claims under both insurance policies were repudiated by both companies, each of which suggested that the other was liable, and later formal claims for arbitration were made by Loyst against the General Assurance Corporation, and by Gale, as trustee for Loyst, against the Motor Union Insurance Company. The claims were referred to Mr. Craig Henderson by the consent of all parties. At the arbitration it was contended for the claimants that Loyst must recover under one of the policies, and that he should be indemnified by the other in so far as he was not indemnified by the one. That under condition 10 of the Motor Insurance Company's policy, and condition 5 of the General Assurance Corporation's policy both insurers were liable to pay rateable contributions to the insured. It was submitted on behalf of the Motor Insurance Company that the provisions of the policy extending the benefit to another person must be interpreted strictly, and that Loyst being already insured under another policy was not covered by theirs, that there could be no liability of both companies. It was also contended for the General Accident Assurance Corporation that the liability of one insurer excluded that of the other, and that the rateable contribution condition did not apply. The arbitrator found, (1) that the liability of one excluded the other, and that they were not bound by the conditions relating to payment by rateable proportions; (2) that Loyst came within the requirements of condition 6 of the Motor Insurance Company's policy, and that therefore Gale, as trustee for him, was entitled to be indemnified in respect of all sums paid by Loyst as a result of the collision and the action following. Loyst's claim against the General Accident Assurance Corporation failed. The question for the court was whether the award was correct in law. Counsel for the Motor Union Insurance Company agreed that the claimants might recover under one policy or the other, but submitted that under condition 6 of the Motor Union Insurance Company's policy Loyst could not recover at all from them. Counsel for the General Accident Assurance Corporation contended that the company which insured the car which did the damage must pay, and that his company had only intended to pay if the other car was not insured at all. Counsel for the claimants did not address the court.

ROCHE, J., giving judgment, stated the facts and read the relevant clauses of the policies and continued. Each policy provided that if the risk was covered by another policy the insurers would not be liable. It was also provided by each policy that where two policies were in existence the insurers were to pay rateably. These two provisions must be read together, and were not to deprive the claimants of any right to recover. The clause denying liability was qualified by that relating to rateable contribution, showing that rateable contribution was intended where there were two policies. The suggested contribution in the proportion of the values of the cars insured was not satisfactory, the right basis was that each of the respondents should pay to the claimants one-half of the amount claimed.

COUNSEL: For the claimants, *Blanco White* and *P. S. P. Handcock*; for the Motor Union Insurance Company, *Montgomery*, K.C., and *H. J. Wallington*; for the General Accident Assurance Corporation, *Le Quesne*, K.C., and *G. M. Hilbery*.

SOLICITORS: *T. and N. Blanco White*; *A. D. Vandamm and Co.*; *Joynson-Hicks & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Building and Engineering Contracts

Mr. Justice Roche presided at a meeting of the Solicitors' Managing Clerks' Association in the Inner Temple Hall, on Friday, the 29th ult., when Mr. A. A. Hudson, K.C., delivered an interesting and instructive lecture entitled "Some Pitfalls in Building and Engineering Contracts." He prefaced his remarks by saying that he had looked up the word "pitfall" in Webster's Dictionary and found there that it meant "a pit slightly covered for concealment and intended to catch wild beasts or men." He only proposed to deal with pitfalls for men. He then divided his subject into the different kinds of contracts. He said there were prime cost contracts, that was to say, contracts to do the work at net cost, plus some remuneration, generally a percentage; schedule contracts, which were generally to carry out some complete work, but in which the prices for the different portions of the work were fixed by a schedule; and there were lump sum contracts; besides these there were some special forms of contract issued by the Ministry of Health and by the Royal Institution of British Architects. Dealing first with prime cost contracts, he warned his hearers against entering into such kind of contracts, and told them that net cost in building and engineering work was, except in certain cases, unascertainable. Payment of the various labourers and mechanics employed could be ascertained but with regard to materials manufactured at the shop, transport and head office charges, there could not be anything more than an estimate. Illustrating the difficulties in ascertaining net costs, he referred as an example to the manufacture of a door made at the shop where various machines were employed in the making, and pointed out that to ascertain the value of a machine per minute or per hour it was necessary to find out the rental value of the building in which the machine was fixed, the value of the machine itself, the value of the boiler which created the power to drive the machine, as well as the cost of fuel, insurance, attendance on the boiler, and an innumerable number of smaller items. He then referred to the difficulty, even assuming that some kind of value could be put at per hour, or per minute, upon the different machines through which the door passed in ascertaining the cost of keeping a record and checking the amount of time consumed by the various materials of the door in going through the different machines. He also instanced the case of transport, and said that if the builder had only one job that he was carrying out and only employed his lorries or carts for the supplying materials to that one job, there might not be much difficulty in ascertaining the cost of transport; but if the builder had many works, all going on at the same time, it would be a practical impossibility to apportion the cost of conveying one part of a load to the works in question out of the number of other things which were being taken to other jobs. In a similar way he instanced the difficulty of ascertaining head office charges. He next in order referred to schedule contracts, and with regard to that form of contract said it was a perfectly good contract to enter into, and was adopted in many of the big engineering works; but that the difficulty in that case was to be quite certain that there was a price fixed for every item of the work to be carried out. Unless this was done, although the obligation probably was to carry out the whole work, still if the price for some portion of the work was unsettled beforehand, the builder would be entitled to be paid a reasonable price for that work, unless there was some special provision made in such a contingency for valuing the work not included in the schedule. He next referred to the Ministry of Health contracts, and said that he had heard that these were framed by a committee. Whether that was so or not, he could well understand the difficulty of a committee in preparing a draft of such a complicated nature as a building contract; but, however the contracts, and particularly the prime cost contracts, were drafted, he could say this, that he had never known any contracts create so much litigation as the Ministry of Health contracts. One very serious difficulty which arose in settling up the payment to the contractor under such contracts was that the local authority looked to the Ministry of Health to find the money to build the houses, and although the decision

of the architect under such contracts was made final, subject to arbitration if notice was given in three days, the Ministry of Health took upon themselves to dictate to the local authority how much they should pay, and the council, being in the position of having to obtain the money for building from the State, had to accept the dictates of the Ministry of Health, so that the architect, whose decision was expressed to be final, subject to arbitration, became a nonentity. The lecturer then referred to lump sum contracts, and said that in his experience that was the best form of contract for the building owner. Everything, however, in such a contract had to be thought out beforehand with the greatest care, and that was why, in his experience, it was a good contract. Architects and engineers, as well as the employers, were obliged to state definitely whatever was to be carried out for a lump sum. This was, as he pointed out in contradistinction to a prime cost contract, which, he said, was a lazy contract, in which nobody had to make up his mind beforehand, everybody being content to say that it was unnecessary to decide anything with any definiteness, because whatever was done would have to be paid for at net cost, and that if more was done more would be paid, whilst if less was done less would be paid. He gave several examples where foresight in the drafting of contracts had saved a building owner very large sums, and instanced the case of a building in the heart of London where, in all probability, questions of light and air might arise. In that case, he said, that an employer knowing, as he must do, more or less, the claims which would arise by neighbouring owners that their light should not be interfered with, could quite easily make provision in advance for what was to happen in case the building owner were restrained by injunction during the progress of the works. The lecturer said that it was quite possible to provide for such a contingency by specifying in detail the keeping down of certain portions of the work, the temporary works necessary in such an event, and the price to be paid for the work thus altered or modified, while on the other hand if such a contingency were unprovided for, the building owner would have to meet claims by the builder for damages or increased cost owing to the stoppage of the work or interference with the builder's plan of operations, and there was no knowing how much such claims for damages or interference would amount to in the hands of a skilful person accustomed to framing such claims. Similar questions arose, he pointed out, with large engineering works, where the use of railway lines was concerned, and provision should be made to meet the contingencies of interruption of the contractor's traffic to and from the works. This should be provided for in the contract itself, and not left to chance. In that way careful drafting became an insurance against claims and loss, and he warned his hearers against using stereotyped forms for every kind of work whatever it might be. He then referred to some general conditions in building contracts, and observed that it was often a mistaken idea that in providing for liquidated damages in case of delay the draftsman should limit the causes of delay for which an extension of time should be granted, whereas the draftsman should be careful to extend them as far as possible so as to keep alive either the contract date or a date in substitution for the contract date. One of the principal provisions for extension—often omitted—was the provision for extension of time in case of delay caused by the architect or engineer, in the non-supply of drawings and details, or by the building owner in not giving possession of the site or some part of it when he ought to have done so. He said that there must be a date from which penalties or liquidated damages could run, otherwise they could never be recovered. In this connexion he often reminded clients of the advertisement of "Charley's Aunt Still Running," and told them that Charley's Aunt must have started running from somewhere. And so it was with liquidated damages. Unless a time for completion was kept alive under various events which might occur in the carrying out of a building contract, then there would be no date from which liquidated damages could run and no right in the building owner to recover them. Having mentioned some other pitfalls in the general conditions of building contracts, he concluded his lecture by speaking of the peculiar ideas that laymen sometimes held with regard to costs. He said that he appeared for the plaintiff in an arbitration where the architect claimed £4,000 for fees. The arbitrator was a very distinguished architect who had carried out large public buildings, and an award was eventually made by him in favour of the plaintiff, who was awarded £2,000, but the award provided that each party was to pay his own costs. He (the lecturer) afterwards met by chance the arbitrator, whom he knew quite well, and asked him how it was he had come to decide that each party should pay his own costs, and this distinguished architect said: "Well, you know, this is the way I looked at it. You claimed £4,000 and won £2,000. The employer knocked off £2,000, and therefore won £2,000. So honours were easy."

Societies.

Gray's Inn.

An Entrance Scholarship at Gray's Inn (£80 a year for three years) has been awarded to Mr. H. V. A. Franklin, of Hertford College, Oxford.

Law Society's School of Law.

A Moot was held at the Society's Hall on Tuesday, 16th inst. The case for consideration was in the nature of an appeal from the decision of the King's Bench Division in *Bates* v. *Batey & Co., Ltd.*, 1913, 3 K.B. 351. Mr. H. Du Parcq, K.C., presided over the court, and the following appeared as "counsel": For the appellant, Mr. J. B. R. Davies (student), Mr. A. C. D. Ensor (student); for the respondents, Mr. M. B. Yeatman (solicitor), Mr. K. H. Bain (student). The appeal was dismissed.

United Law Society.

A meeting of the Society was held on Monday, the 15th inst., in the Middle Temple Common Room, Mr. L. F. Stemp in the chair. Mr. E. H. Pearce opened "That in the opinion of this House actions for breach of promise of marriage should be abolished." Mr. C. T. R. Llewellyn opposed. There also spoke Messrs. F. H. Butcher, P. Pitt, G. B. Burke and J. MacMillan. The opener having replied, the motion was put to the meeting and was carried by six votes.

The annual dinner of the Society will be held at the Café Monico on 13th December, 1926. The Rt. Hon. The Lord Chancellor will preside.

Warwickshire Law Society.

The Warwickshire Law Society this year held their twelfth annual meeting in Nuneaton, and in the evening their annual dinner took place at the Newdegate Arms Hotel. Mr. W. B. Cocks, LL.B., president of the society for the past year, was in the chair, and among the principal guests were: The Hon. Mr. Justice McCardie, Sir Henry Maddocks, K.C., His Honour Judge Staveley-Hill, Mr. A. H. Coley, LL.D. (president of The Law Society), Mr. R. A. Willes (deputy chairman of Warwickshire Quarter Sessions), Mr. Alderman R. W. Swinnerton (Mayor of Nuneaton), Mr. C. W. Iliffe (Coroner for North Warwickshire), Mr. Alderman Melly (chairman of the Nuneaton Bench of Justices), and Mr. J. F. Eales. There were present in all about sixty-two members and guests at the dinner. After the Royal toast had been honoured, Mr. W. B. Cocks proposed the toast of the Bench and the Bar, to which Mr. Justice McCardie and Sir Henry Maddocks responded. The toast of the Warwickshire Law Society was proposed by Mr. A. H. Coley, and the response was made by Mr. H. I. Mander, the president-elect of the Warwickshire Law Society. The toast of the visitors was proposed by Mr. M. E. T. Wratislaw, of Rugby, who coupled with the toast the names of His Honour Judge Staveley-Hill, the Mayor of Nuneaton, and Mr. R. A. Willes, to which those gentlemen responded. In the course of the speeches both of Mr. A. H. Coley and Mr. H. I. Mander, emphasis was laid upon the necessity of the Profession using its utmost endeavours to work in a satisfactory manner the new poor persons' procedure, and it was mentioned that of a membership of 102, thirty-four solicitors in the county had put their names upon the rota for conducting cases, this being a larger proportion than is at first apparent, because in many cases there are a number of solicitors in one office, and one in each office is sometimes deputed to do this work on behalf of the firm.

Cornwall Law Society.

The annual meeting and dinner of the Cornwall Law Society were held at Truro on the 28th ult. There was a good attendance of members from all parts of the county. Various subjects of professional interest were discussed at length, including the improper delay of the departmental committee on the subject of actions against the Crown, it being nearly five years since the committee was set up and no report as yet having been issued. An interesting debate also took place on the work of the Poor Persons Committee for Cornwall, which committee has made convenient arrangements for carrying out the scheme of The Law Society. There were indications that this work will be in due course of time a matter of some magnitude. The following officers were elected: President, Mr. W. L. Platts (clerk of the peace for Cornwall, Truro); vice-president, Mr. W. H. Borlase (Borlase

and Venning, Penzance); hon. secretary and treasurer, Dr. H. Newcome Wright (Stephens, Graham, Wright, and Co., St. Austell); committee: the three principal officers above named, with Messrs. Edward Boase (Boase and Bennetts, Penzance), Gilbert H. Chilcott (Chilcott and Sons, Truro), Henry L. Cowlard (Cowlard, Grylls, and Cowlard, Launceston), A. de Castro Glubb (Liskeard), Henry Grylls (Grylls and Paige, Redruth), and Robert Pease (Lostwithiel).

Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at The Law Society's Hall, Chancery-lane, on the 10th inst., Mr. Alan G. Gibson in the chair, the other Directors present being The Right Hon. Sir William Bull, Bart., M.P., Sir A. Copson Peake (Leeds), and Messrs. F. E. F. Barham, E. R. Cook, W. E. Cunliffe, T. S. Curtis, H. Fulton (Salisbury), E. F. Knapp-Fisher, C. G. May, H. A. H. Newington, R. W. Poole, P. J. Sketon (Manchester), and A. B. Urmston (Maidstone). £825 was distributed in grants of relief, thirty-five new members were admitted, and other business transacted. The Right Hon. Sir William Bull, Bart. M.P., was elected as chairman, and Mr. Charles E. Barry (Bristol) as deputy-chairman for the ensuing year.

Law Students' Journal.

Law Students' Debating Society.

At a meeting of the society held at the Law Society's Hall, on Tuesday, 16th inst. (Chairman Miss D. C. Johnson), the subject for debate was: "That in the opinion of this House in view of recent events the law relating to Trade Unions is in urgent need of amendment."

Mr. Herbert Malone opened in the affirmative, and Mr. J. J. Roberts opened in the negative. The following members having spoken, viz.: Messrs. H. M. Pratt, C. F. Spurrell, C. G. Sulenzer, A. L. Phillips, W. M. Pleadwell, E. G. M. Fletcher and W. S. Jones, and the opener having replied, the chairman summed up, the motion on being put to the meeting was carried by ten votes. There were twenty-five members and five visitors present.

Inns of Court.

CALLS TO THE BAR.

Last Wednesday night was Call Night at the four Inns of Court. Of the seventy-seven students called to the Bar two were women; one was the first Burmese woman law student, who was called by the Inner Temple, and the other was called by the Middle Temple.

Both Sir Henry Curtis-Bennett, K.C., and Mr. J. G. Hurst, K.C., who were called to the Bench of the Middle Temple, saw their sons called to the Bar. The new barristers also include Sir Gifford Fox and Mr. E. H. Jessel, only son of Lord Jessel.

The following is a list of those called to the Bar:—

LINCOLN'S INN.

H. S. Houldsworth (Holder of Certificate of Honour) (D.Sc., Univ. of Leeds), E. Isaac (M.A., Edin.), N. M. Deshmukh (B.A. Cantab.), W. E. Fitzgerald (Edin. Univ.), V. N. Patil (B.A. Cantab.), F. W. Hornibrook, S. M. Sharif (B.A. Cantab., B.A. Punjab Univ.), C. T. G. Edwards, B. C. Guha (B.L. Calcutta Univ.), C. Stevenson (B.A. Cantab.), S. S. Bellairs, K. R. V. Sastry (Univ. of Madras), K. B. Bose (M.A., B.L., Calcutta Univ.), M. L. Anand (B.A., LL.B.), S. J. Rahimtoola (B.A., LL.B., Bombay).

INNER TEMPLE.

W. L. James (B.A., Queen's Coll., Camb.) (holder of a certificate of honour), F. H. Slingsby (B.A., New Coll., Oxford), G. R. Elvey (B.A., Oriel Coll., Oxford), C. B. Findlay (B.A., Clare Coll., Camb.), T. A. Brown (B.A., Oriel Coll., Oxford), P. O. A. Davison (B.A., Magd. Coll., Oxford), R. C. Wright (M.A., Worc. Coll., Oxford), E. H. Jessel (B.A., Christ Church, Oxford), G. C. Low (B.A., Magd. Coll., Oxford), G. Corderoy (B.A., King's Coll., Camb.), V. W. F. Jones (B.A., Lincoln Coll., Oxford), J. W. Simpson (Magd. Coll., Oxford), M. Morris (London Univ.), J. Hamilton (M.A., LL.B., Gonv. and Caius Coll., Camb.), Miss Ma Pwa Hmee, H. C. Radcliffe (B.A., LL.B., Trinity Coll., Camb.), F. A. Wise (B.A., Jesus Coll., Camb.), B. T. Tindall (B.A., Pembroke Coll., Camb.), T. E. Williams.

MIDDLE TEMPLE.

J. G. Jarvie, C. J. G. MacGuckin, M.Inst.C.E., M.I.Mech.E., E. R. Sudbury (M.A. Oxon), A. G. Sadik (B.A. Oxon), C. C. Stevens (B.A. Oxon), P. J. R. Agnihotri (M. A. Punjab, B.A. Oxon), O. Hughes-Onslow, F. H. Curtis-Bennett (B.A. Cantab.), A. Scott (M.B., Ch.B. Glasgow), Sir Gifford W. G. Fox (B.A. Oxon), Eileen A. Macdonald (LL.B. Manchester), H. S. P. Moses (B.A. Oxon), E. R. Richardson, A. H. L. Masson, A. A. Darwood, S. P. Tha (B.A. Rangoon), W. H. Langmaid, (Whitworth Scholar), E. C. Doxat, J. H. Pickup, H. R. Askew B.Sc. London), J. E. G. Hurst (B.A. Oxon), M. R. Ahmad, E. V. K. Tucker (B.A., B.C.L. Oxon), D. V. Patel (B.A., LL.B. Bombay).

GRAY'S INN.

C. Martin (B.Sc. London), G. Terrell, G. J. Finch (B.Sc. London), F. D. Lamb, W. Price-Jones (B.A., Univ. of Wales), B. Chulanetra (Siam), G. L. Mallam, P. Gray, E. A. Normington (B.C.L., Exeter Coll., Oxford; LL.B., Univ. of Manchester), L. Pracherd (Siam), S. Sitprija (B.A., LL.B., Gonv. and Caius Coll., Camb.), W. Smith, W. D. Larrett (M.A., Christ's Coll., Camb.), V. Bates (B.A., New Coll., Oxford), S. W. P. F. Sutton, L. Kimball (B.A., Harvard Univ.), P. P. Mookerjee (M.A., B.L., Calcutta Univ.), A. E. Baucher.

Rules and Orders.

THE RENEWABLE LEASEHOLDS REGULATIONS, 1925, DATED 24TH AUGUST, 1925, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER THE FIFTEENTH SCHEDULE TO THE LAW OF PROPERTY ACT, 1922 (12 & 13 GEO. 5, C. 16), AS AMENDED BY THE LAW OF PROPERTY (AMENDMENT) ACT, 1924 (15 GEO. 5, C. 5), AND THE LAW OF PROPERTY ACT, 1925 (15 GEO. 5, C. 20).

The Minister of Agriculture and Fisheries in exercise of the powers conferred on him by the Fifteenth Schedule to the Law of Property Act, 1922, as amended by the Law of Property (Amendment) Act, 1924, and the Law of Property Act, 1925, makes the following regulations:—

1. *Percentage for purposes of para.* 12 (6) *of Fifteenth Schedule.*]—For the purposes of paragraph 12 (6) of the Fifteenth Schedule to the Law of Property Act, 1922, as amended by the Law of Property (Amendment) Act, 1924, five per cent. shall be the prescribed percentage applicable generally except where the Minister in any particular instance with a view to maintaining any existing practice prescribes any other percentage.

2. *Arbitrations.*]—(1) Where any question or dispute is under paragraph 16 of the Fifteenth Schedule to the Law of Property Act, 1922, submitted to the Minister of Agriculture and Fisheries for determination, the matter shall be determined under and in accordance with the provisions of the Arbitration Act, 1889, and—

(*a*) unless either party to the arbitration shall, within seven days after receipt of a written notice by the Minister that he proposes that a person to be appointed by him shall act as arbitrator, give notice in writing to the Minister that he objects to such proposal, the Minister may appoint an officer of the Ministry of Agriculture and Fisheries or other person to act as the arbitrator, in which case the award made by the person so appointed shall be deemed to be an award by the Minister; or

(*b*) the Minister may appoint any officer of the Ministry or other person to hear on his behalf the parties or their solicitors or counsel and the witnesses in the arbitration and to report thereon to the Minister to enable him to make an award, and for the purposes of or in connection with such hearing the person appointed shall have all the powers of an arbitrator.

(2) If any person appointed to act under this Regulation shall die or in the judgment of the Minister become incapable or unfit the Minister may appoint another person to act in his place.

(3) The remuneration of any person, other than an officer of the Ministry, who is appointed to act under this Regulation shall be fixed by the Minister.

(4) The submission of any question or dispute to the Minister for determination shall be in writing signed by or on behalf of the party submitting the same and shall set out the question or dispute to be determined. Provided that the submission may, with the sanction of the Minister or any person appointed by him to act under this Regulation, be amended or varied on such terms as to payment of costs or otherwise as the Minister or such person as aforesaid may determine.

(5) These Regulations shall come into operation on the first day of January, Nineteen hundred and twenty-six, and may be cited as the Renewable Leaseholds Regulations, 1925.

(6) These Regulations do not extend to Scotland or Ireland.

In witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this twenty-fourth day of August, Nineteen hundred and twenty-five.

(L.S.) *F. L. C. Floud,*
Secretary.

THE LAND CHARGES FEES ORDER, 1925. DATED NOVEMBER 3, 1925.

By virtue and in pursuance of the Land Charges Act, 1925, I, George Viscount Cave, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, do hereby annul the Rule as to Fees dated 8th August, 1900, made under the Land Charges Registration and Searches Act, 1888, and the Land Charges Act, 1900, and do determine that the following Fees shall be paid under the said Act subject to the Regulations hereinafter contained :—

		s.	d.
1. Registrations	per name	2	6
2. Entry of satisfaction, cesser, discharge vacation, or cancellation of a registration	per name	2	6
3. Certificate of satisfaction, cesser or discharge		1	0
4. Renewal of registration	per name	1	0
5. Modification or rectification of an Entry	per name	2	6
6. Personal Search in the Alphabetical Index	per name	2	0
7. Personal Search in any Register	per name	2	0
8. Official Search in the Alphabetical Index :—			
(*a*) against one name at one address (including issue of certificate)		5	0
(*b*) against the same name but with additional addresses	per address	2	6
9. Official Search in any one of the Registers :—			
(*a*) against one name at one address (including issue of certificate)		5	0
(*b*) against the same name with additional addresses	per address	2	6
10. Office copy of any entry in any of the Registers (not including a copy or extract of any plan or document filed in the Registry)		2	6
11. Office copy of any plan or other document filed in the Registry, such further fee, according to the time and labour employed, as the Registrar shall prescribe	per name	5	0
12. Expediting an Official Search	per name	5	0
13. Telegraphing or Telephoning the result of an Official Search (which includes the cost of the telegraph or telephone if such cost does not exceed 1*s.*)	per name	2	6

Regulations as to Fees.

1. All fees, except those payable in respect of registration under sub-section (6) of section 10 of the Act shall be prepaid by Land Registry stamps.

2. Land Registry stamps shall be purchased in the Registry and such other places as may from time to time be appointed and may be paid for by cash or by cheque, postal or money order, made payable to H.M. Commissioners of Inland Revenue.

3. All fees in respect of registration under sub-section (6) of section 10 of the Act shall be prepaid in cash at the local deeds registry or by cheque, postal or money order, made payable to the Registrar of the appropriate deeds Registry.

4. All fees may be sent by post.

5. Where the amount of the fee is not defined, or immediately ascertainable, such deposit shall be made as the Registrar shall direct.

6. The fees prescribed for expediting an official search and for telegraphing or telephoning the result of the search shall not apply to the local deeds registries and no right to make an application to a local deeds Registrar for these purposes shall be implied.

7. Where the Registrar, in the exercise of his discretion, authorises an application, search or official certificate of search to be made or granted in a manner which involves a reduction of fees, he may require such fees to be paid, having regard to the time and labour involved or likely to be involved, not exceeding the fees which would have been payable had his discretion not been so exercised, as he may think reasonable.

8. These Regulations shall come into operation on the 1st day of January, 1926, and may be cited as the Land Charges Fees Order, 1925.

Dated the 3rd day of November, 1925.

Cave, C.

George Hennessy.
Curzon.
} Lords Commissioners of His Majesty's Treasury.

THE FILING OF LEASES FEE ORDER, 1925, DATED 11TH NOVEMBER, 1925.

I, the Right Honourable Sir Ernest Murray Pollock, Bart., Master of the Rolls, by virtue and in pursuance of the Administration of Justice Acts, 1920 and 1925, and of the Law of Property Act, 1922, and every other power enabling me in that behalf, with the concurrence of the Lords Commissioners of His Majesty's Treasury, do hereby make the following Order :—

1. The fees set out in the second column of the Schedule to this Order shall be taken in the Supreme Court in respect of transactions under the Filing of Leases Rules, 1925.

2. All fees taken under this Order shall be paid by judicature stamps to be affixed to the forms prescribed by the said Rules.

3. This Order shall come into operation on the first day of January, 1926, and may be cited as the Filing of Leases Fee Order, 1925.

Dated the 11th day of November, 1925.

Ernest M. Pollock, M.R.

Stanley,
F. C. Thomson,
} Lords Commissioners of His Majesty's Treasury.

The Schedule.

1. On every deposit of an instrument for filing	*s. d.* 5 0
2. On every requisition for search or inspection	5 0
3. On every office copy of an instrument (including endorsements upon an instrument) per folio	0 8
4. On every tracing of a plan supplied with an office copy	the reasonable cost thereof to be determined in case of doubt by the Senior Master of the Supreme Court.
5. On the examination of every copy presented to be stamped as an office copy (including any endorsements) per folio	*s. d.* 0 3
6. On the examination of every plan accompanying a copy presented for examination to be stamped as an office copy.	the reasonable cost of such examination to be determined in case of doubt by the Senior Master of the Supreme Court.

Legal Notes and News.

Honours and Appointments.

Sir PAUL OGDEN LAURENCE, Lord Justice of Appeal, and Sir LANCELOT SANDERSON, K.C. (formerly Chief Justice of Calcutta), were, on the 5th inst., sworn of His Majesty's Most Honourable Privy Council.

The King has been pleased to confer the honour of Knighthood upon Mr. Justice (ALBERT CHARLES) CLAUSON, C.B.E.

Mr. WILLIAM HUXTABLE THORNE, barrister-at-law, has been appointed a Puisne Judge of the Supreme Court of the Straits Settlements.

Mr. HENRY SEATTLE GUNSON, solicitor, Haywards Heath, has been appointed clerk to the Cuckfield Urban District Council in succession to Mr. Charles H. Waugh, who has resigned. Mr. Gunson (who also holds the position of Clerk to the Mid-Sussex Joint Water Board) was admitted in 1908.

Mr. E. BROCKLEBANK EVANS, solicitor, the Assistant Clerk, has been appointed Clerk to the Cardigan Rural District Council, in succession to Mr. David Davies (a member of the firm of Messrs. George, Davies & Evans, solicitors, Cardigan), who has retired. Mr. Evans—who was admitted in 1910—and is a member of the same firm—also holds the appointment of Clerk to the Guardians.

Mr. W. J. BROWNE has been appointed a Senior Clerk in the office of Mr. R. Tweedale Meaby, solicitor, Clerk of the Peace and Clerk to the County Council of Nottinghamshire.

Mr. HERBERT TREDWELL, Assistant Town Clerk, has been appointed Town Clerk of Port Elizabeth, South Africa, in succession to Mr. Willoughby How, who died in August last. Mr. Tredwell was previously Town Clerk of Ladysmith.

Mr. T. L. KESTEVEN (of Messrs. Lawrence Graham & Co.), who has been Solicitor to the Legal & General Assurance Society for upwards of thirty years, has been elected a director as from the 1st January, 1927.

Mr. ALBERT BRIGGS, of Whitley Bay, Northumberland, has been appointed a Commissioner to administer Oaths. Mr. Briggs was admitted in March, 1915.

Mr. RICHARD B. PILCHER, O.B.E. (London), of the Institute of Chemistry, has been elected President of the Chartered Institute of Secretaries. Brigadier-General A. MAXWELL, C.B., C.M.G., D.S.O. (London), of Glyn Mills and Co., and Mr. W. G. VERDON SMITH, C.B.E. (Bristol), Bristol Tramways and Carriage Co. Limited, have been elected Vice-Presidents, and Mr. C. H. Gough, National Discount Co. Limited, has been elected Treasurer for the ensuing year.

In an appreciation of his valuable services to the town of Eastbourne, the Council of that county borough have voted their Town Clerk, Mr. H. W. FORARQUE, an honorarium of £1,000.

Professional Announcement.

Messrs. Chamberlayne, Keene & Co. announce that they have taken into partnership, as from the 15th November, Mr. Edward Arthur Platt, of 18, Wessex-gardens, Golders Green, N.W. The new firm will practice under the style of Chamberlayne, Keene & Co., at 83, Pall Mall, S.W.1.

MR. EDWARD STANLEY MOULD PEROWNE (Perowne & Co.), of 7, Great James Street, Bedford Row, W.C.1, 5 rue Meyerbeer, Paris, and 8 Avenue de la Victoire, Nice, has taken into partnership as from the 1st November, 1926, Mr. LATHOM GEDGE, who has been associated with him in London and Nice for some years past. Mr. Gedge will continue in charge of the Nice office. The name of the firm will remain unchanged.

Wills and Bequests.

Mr. Thomas Mieres Percival, solicitor (seventy-six), of Abington Park-parade, Northampton, District Registrar of the High Court of Justice and County Court Registrar, left estate of the gross value of £9,186.

Mr. Charles Alexander Howell, barrister-at-law, of Ethy, Lostwithiel, Cornwall, left unsettled property of the gross value of £38,444.

Mr. William Canning (sixty-nine), solicitor, of Belsize-road, South Hampstead, N.W., left estate of the gross value of £7,182.

Mr. Samuel Murphy, solicitor, of Beulah, Dreghorn Loan, Colinton, Edinburgh, left estate of the value of £17,611.

Mr. Alfred Stunt, solicitor, of Croxted-road, West Dulwich, S.E., left estate of the gross value of £12,094.

Sir Leicester Paul Beaufort, M.A., B.C.L., of Sandown, Broad-road, Wynberg, Cape Province, South Africa, barrister-at-law, Governor of Labuan 1895-1899, and Chief Justice of Northern Rhodesia 1901-1918, who died on 13th August, aged seventy-three, left unsettled personal estate in England of the net value of £27,980.

Mr. Northwood Rawlins, solicitor, of Fernhill, St. Stephen's-road, Bournemouth, late partner in the firm of Messrs. Lovell, Son and Pitfield, solicitors, who died on 7th October, left estate of the gross value of £10,213. He left (*inter alia*): £50 to his former clerk, Lilian Ann Spikesman.

Mr. Harold John Hastings Russell, barrister-at-law, of The Ridgeway, Shere, Surrey, British secretary to the Anglo-German Mixed Arbitral Tribunal and Recorder of Bedford, who died on 22nd August, aged fifty-eight, son of the late Lord Arthur Russell, left estate of the gross value of £18,644.

The Solicitors' Managing Clerks' Association will hold their twenty-first festival dinner on Tuesday, the 23rd inst., at The Wharncliffe Rooms Hotel, Great Central, Marylebone-road, at 6.45 p.m. The President—Mr. W. J. Talbot—will occupy the chair. Amongst those who have already promised to attend are Lord Merrivale, Mr. Justice Eve, Mr. Justice Romer, Mr. Justice Roche, Mr. Justice Bateson, The Solicitor-General and Sir Leslie Scott, K.C., M.P. Tickets may be obtained from any member of the Association, or from the honorary secretary, at his offices, 7, New-court, Carey-street.

MOOT AT GRAY'S INN.

INJURY BY FALLING CORNICE STONE.

A moot was held in Gray's Inn Hall on Monday last before Sir T. Willes Chitty and Lord Justice Atkin, Master of the Moots, there being present besides, Masters Manisty, Keogh, Ross-Brown, and Hinde. The following case was argued:—

The defendant is the occupier of a house which was built some forty years ago. He purchased a long lease of the house some ten years ago. The house faces a highway and has the usual area and railings in front of it. The plaintiff was walking along the highway when a piece of the cornice of the house fell, and, hitting the balcony on the way down, bounded off and fell on and injured him. The plaintiff brought an action for damages. Evidence was called by the defendant at the trial to show that the cornice was apparently in good repair, and that the piece of it fell owing to a latent defect arising from the action of the weather and not discoverable on any reasonable inspection. It was admitted that the defendant did not know of the defect, and the evidence showed that he had taken all usual and reasonable care to keep the cornice in good repair, and there was nothing to show that he ought to have been aware of the defect. The plaintiff based his claim on—(1) nuisance; and (2) trespass; and (3) negligence. The judge gave judgment for the defendant. The plaintiff appeals.

Mr. J. H. Cruchley and Mr. H. Edmund Davies appeared for the appellant; and Messrs. A. A. Watson and H. Weingott for the respondent.

His lordship was of opinion that the appellant to succeed had to make out a case of complete liability. The decision in *Noble* v. *Harrison* was correct, and his lordship could see no distinction between that case and the present. The doctrine in *Rylands* v. *Fletcher* involved two considerations—(1) that what was brought upon land in the ordinary use of the land is not within the last-named case; and (2) an act of God, which constitutes an exception to the rule in *Rylands* v. *Fletcher*, in this connexion extends to the operations of nature. The latent defect constituted a complete answer to the charge, and his lordship accordingly dismissed the appeal, with costs.

JUBILEE OF THE NORTH-EASTERN CIRCUIT MESS.

A dinner to celebrate the jubilee of the foundation of the North-Eastern Circuit Mess, was held in the hall of The Middle Temple on Friday, the 29th ulto, when the leader of the circuit, Mr. W. J. Waugh, K.C., presided. Those members of the Circuit who were present included the following, namely:—Mr. Justice Roche, Mr. Justice Wright, Judge Atherley Jones, Judge Bairstow, Judge Chapman, Judge Granger, Judge Newell, Judge Tebbs, The Right Hon. Sir Herbert Nield, P.C., K.C., Sir Edward Short, K.C., Sir T. Willes Chitty, Sir Henry Cautley, K.C., Mr. W. B. Clode, K.C., Mr. C. R. Dunlop, K.C., Mr. H. B. Grotrian, K.C., Mr. W. J. Jeeves, C.B.E., K.C., Mr. C. F. Lowenthall, K.C., Mr. H. F. Manisty, K.C., Mr. E. A. Mitchell-Innes, K.C., Mr. G. E. L. Mortimer, K.C., Sir Francis Newbolt, K.C., Mr. C. T. Le Quesne, K.C., Mr. J. Scholefield, K.C., Sir Francis Blake, Sir Charles Ellis, Master Valentine Ball, Mr. T. W. Fry, Mr. Hay Halkett, Mr. H. W. W. Wilberforce, Mr. J. R. Macdonald, and Mr. H. B. Hans Hamilton. Sir Edward Tindall Atkinson, K.C., and Mr. H. F. Kemp, K.C., were unavoidably prevented from being present.

THE PLUMBER AND THE PIANO.

A moot was held in the Inner Temple Hall after dinner on Monday last, before Mr. A. M. Langdon, K.C. (Master of the Moots). The following appeal was argued:—

Mrs. A, who has made arrangements for a concert in her drawing room, hires a grand piano from a dealer in pianos. On the morning of the concert an escape of gas is discovered in the drawing room and she sends for a plumber. The plumber on arriving requests the maid to put a cover on the piano. The maid puts a dust sheet on the piano and leaves the plumber to his work. The plumber discovers an escape of gas at a place above the piano and proceeds to stop it by using molten lead. Some lead falls upon the piano and it is seriously damaged. The owner of the piano sues the plumber and Mrs. A. The plumber, a man of straw, allows judgment to go by default. Mrs. A contests the action, and judgment is given in her favour in the court below. The owner of the piano appeals.

The case was argued for the respondent by Mr. A. R. Ellis (barrister) and Mr. W. L. James (student); and for the appellant by Mr. J. M. Symmons (barrister) and Mr. E. M. Holland (student).

Judgment was given in favour of the appellant.

POPULATION LIMIT OF COUNTY BOROUGHS ADOPTED IN COMMITTEE.

The Local Government (County Boroughs and Adjustments) Bill was before Standing Committee D of the House of Commons on Tuesday (16th inst.) The report of the Royal Commission on Local Government last year contained a number of recommendations as to conditions which should be fulfilled before the extension of borough boundaries and the creation of county boroughs should be sanctioned. One of these was that no application should be entertained for county borough powers unless the borough applying had a population of at least 75,000. The above Bill, to give effect to this, was passed through the House of Lords and received second reading in the Commons before the summer recess.

An amendment moved recently by Sir Douglas Newton (Cambridge, U.), provided that the limitation should not apply to boroughs the population of which was 50,000 and over at the census of 1921. Mr. Mitchell Banks (Swindon, U.), supported. Both pointed out that all they were asking for was that those boroughs should retain the right they had at present to apply to Parliament. They would still have to make out their case. By the Bill they were being deprived of that right given them by the Local Government Act of 1888. It was pointed out that the cases of Cambridge and Swindon were typical, but there were only six non-county boroughs now, whose population at the last census exceeded 50,000. They were Stockton-on-Tees, Chesterfield, Cambridge, Luton, Swindon, and Gillingham. But of those created county boroughs by the Act of 1888 four had at present a population of less than 60,000, and three less than 50,000.

Lieutenant-Colonel Fremantle (St. Albans, U.), protested against the amendment and against the taking away or lessening of any of the powers of County Councils, and contended for far greater restrictions than the Bill provided. He would like to see the limit put at 250,000 population.

Mr. Mitchell Banks replied that in those circumstances the Bill ought to be at once withdrawn.

Although the amendment had the support of six members' names on the paper, only Sir Douglas Newton and Mr. Mitchell Banks were present to vote for it, and it was rejected. The Bill was passed and ordered to be reported for third reading.

The Lord Chancellor entertained at Parliament-chamber, Inner Temple, on Thursday, the 28th ult., the following legal delegates to the Imperial Conference, viz.: General Hertzog, Sir Francis Bell, Mr. Ernest Lapointe, Mr. J. G. Latham, Mr. Kevin O'Higgins, Sir Patrick McGrath, Mr. W. I. Higgins, Mr. A. B. Morine, Senator G. H. Barnard, Mr. J. A. Costello, and Mr. L. A. Taschereau. Among the guests invited to meet them were Lord Birkenhead, Lord Haldane, Lord Finlay, Lord Dunedin, Lord Shaw, Lord Sumner, Lord Carson, Lord Blanesborough, Lord Phillimore, Lord Darling, Lord Hanworth Lord Justice Bankes, Lord Justice Atkin, Lord Justice Sargant, Lord Justice Lawrence, Mr. Justice Parsons, The Solicitor-General, Sir Arthur Channell, Sir John Simon, K.C., Mr. H. P. MacMillan, Sir Francis Taylor, Sir John Risley, Sir Charles Neish, Sir Clarkson Tredgold, Mr. M. Alexander, Mr. Aimé Geopprion, Mr. F. T. Barrington Ward, Mr. A. H. Coley, LL.D. (the President of The Law Society), Mr. Stuart Moore, Sir Claud Schuster, and Mr. R. W. Bankes.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y Nov. 22	Mr. More	Mr. Hicks Beach	Mr. Synge	Mr. Ritchie
Tuesday .. 23	Jolly	Bloxam	Ritchie	Synge
Wednesday 24	Ritchie	More	Synge	Ritchie
Thursday . 25	Synge	Jolly	Ritchie	Synge
Friday .. 26	Hicks Beach	Ritchie	Synge	Ritchie
Saturday .. 27	Bloxam	Synge	Ritchie	Synge

Date.	Mr. Justice Astbury.	Mr. Justice Lawrence.	Mr. Justice Russell.	Mr. Justice Tomlin.
M'nd'y Nov. 22	Mr. More	Mr. Jolly	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 23	Jolly	More	Hicks Beach	Bloxam
Wednesday 24	More	Jolly	Bloxam	Hicks Beach
Thursday . 25	Jolly	More	Hicks Beach	Bloxam
Friday .. 26	More	Jolly	Bloxam	Hicks Beach
Saturday .. 27	Jolly	More	Hicks Beach	Bloxam

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 25th November, 1926.

	Middle Price 17th Nov.	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 2½%	54⅝	4 12 0	—
War Loan 5% 1929-47	99 1/32	5 0 0	5 0 0
War Loan 4½% 1925-45	93¾	4 16 0	5 0 0
War Loan 4% (Tax free) 1929-42	100⅛	4 0 0	4 0 0
War Loan 3½% 1st March 1928	98 15/32	3 11 0	4 18 0
Funding 4% Loan 1960-90	84⅞	4 14 6	4 15 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	92	4 7 0	4 9 0
Conversion 4½% Loan 1940-44	95⅜	4 14 6	4 19 0
Conversion 3½% Loan 1961	74⅞	4 13 6	—
Local Loans 3% Stock 1921 or after	62 1/32	4 16 0	—
Bank Stock	245½	4 17 6	—
India 4½% 1950-55	92	4 18 0	5 0 6
India 3½%	69⅞	5 0 6	—
India 3%	59¼	5 0 6	—
Sudan 4½% 1939-73	93¾	4 16 0	5 0 0
Sudan 4% 1974	83¾	4 15 6	4 18 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years)	79⅞	3 15 6	4 14 0
Colonial Securities.			
Canada 3% 1938	84	3 11 6	4 19 0
Cape of Good Hope 4% 1916-36	91½	4 7 6	5 2 0
Cape of Good Hope 3½% 1929-49	79⅞	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	99½	5 1 0	5 2 6
Gold Coast 4½% 1956	95½	4 15 0	4 17 0
Jamaica 4½% 1941-71	91½	4 18 6	5 0 0
Natal 4% 1937	91¾	4 7 0	4 19 0
New South Wales 4½% 1935-45	89½	5 1 0	5 10 0
New South Wales 5% 1945-65	94⅜	5 5 6	5 6 0
New Zealand 4½% 1945	95½	4 14 6	4 18 0
New Zealand 4% 1929	96½	4 3 6	5 6 0
Queensland 5% 1940-60	95½	5 5 0	5 5 6
South Africa 5% 1945-75	100¾	4 19 0	5 0 0
S. Australia 5% 1945-75	98½	5 2 0	5 4 0
Tasmania 5% 1932-42	98⅜	5 1 6	5 2 6
Victoria 5% 1945-75	99	5 1 0	5 3 0
W. Australia 5% 1945-75	98½	5 1 0	5 3 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62½	4 16 0	—
Birmingham 5% 1946-56	100⅞	4 19 0	4 19 6
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	66½	4 10 6	5 2 0
Hull 3½% 1925-55	75½	4 13 0	5 0 6
Liverpool 3½% on or after 1942 at option of Corpn.	73	4 16 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	51½	4 17 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61½	4 17 6	—
Manchester 3% on or after 1941	63	4 15 6	—
Metropolitan Water Board 3% 'A' 1963-2003	61¾	4 17 0	4 18 0
Metropolitan Water Board 3% 'B' 1934-2003	63	4 15 6	5 17 0
Middlesex C. C. 3½% 1927-47	80½	4 7 0	4 19 6
Newcastle 3½% irredeemable	72⅛	4 17 0	—
Nottingham 3% irredeemable	61½	4 17 6	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	100	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge	99½	5 0 6	—
Gt. Western Rly. 5% Preference	93½	5 7 0	—
L. North Eastern Rly. 4% Debenture	76¾	5 4 0	—
L. North Eastern Rly. 4% Guaranteed	73	5 9 6	—
L. North Eastern Rly. 4% 1st Preference	65½	6 3 0	—
L. Mid. & Scot. Rly. 4% Debenture	79½	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	77½	5 3 6	—
L. Mid. & Scot. Rly. 4% Preference	72½	5 11 0	—
Southern Railway 4% Debenture	80½	4 19 6	—
Southern Railway 5% Guaranteed	98	5 2 0	—
Southern Railway 5% Preference	93½	5 7 0	—

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